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Supreme Court of the United States 2

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[redacted] INSURANCE COMPANY, AGRICULTURAL INSURANCE COMPANY, ATLANTIC INSURANCE COMPANY OF PHILADELPHIA, ET AL., PETITIONERS,

vs.

[redacted] H. REED, SUPERINTENDENT OF THE INSURANCE DEPARTMENT OF THE STATE OF [redacted]

[redacted]

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926

No.

ÆTNA INSURANCE COMPANY, AGRICULTURAL INSURANCE COMPANY, ALLIANCE INSURANCE COMPANY OF PHILADELPHIA, ET AL., PETITIONERS,

vs.

BEN C. HYDE, SUPERINTENDENT OF THE INSURANCE DEPARTMENT OF THE STATE OF MISSOURI

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI

VOLUME IV

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(Reporter reads answer.)

Mr. Folonie: Yes, that is right.

The Witness: In 1919 they rather reversed that process. They charge us a commission there of about three or four per cent above their average commission paid and their apportioned items that year are $1,476,258. The Missouri [fol. 2607] business is 3.61 per cent of the total; giving an apportionment of $53,292 while they apportioned $38,107.

Mr. Folonie:

Q. Mr. McGee, have you added up to see whether the totals of the expense of the National Fire as you have figured it and the total as they are in the figures in suit here, whether they are not virtually identical?

A. Which, for the five years, you mean?

Mr. Folonie: Yes, for the National Fire?

A. No.

Mr. Folonie: It looks as though it was a difference of distribution there as though they had one item larger and one smaller and that seemed to offset, pretty well offset, is that correct?

A. That was exactly the idea I was trying to give.

Mr. Folonie:

Q. Did you add them up and see whether there was any difference in your totals that you give there? Whether in making both corrections, increase and decrease, whether you reached the same total for the five years as the figures already in evidence?

A. I don't just exactly get what you are driving at there.

Mr. Folonie: Well, some items you indicate are too high and some too low in the same year's report there, as though they were distributed different from your method of distribution, and now have you added up the whole five years' expense as they are here in evidence and as you figured them to see whether they came out the same in total?

[fol. 2608] A. Not the five years. I have the five years year by year.

Mr. Folonie:

Q. Do they come out substantially alike or is there any difference particularly?

A. No, not in this particular company.

Mr. Folonie: That is what I was asking.

The Witness: Orient Insurance Company of Hartford. In 1917 they reported in this suit expense ratio of 43.6. Their average expense was 39.94. They charge us with a commission about five per cent above their average commission. They also make a pretty stiff charge for inspections and surveys. They paid the Missouri Inspection Bureau $733 and charge up Missouri with $2,747. Comes to apportionment, their apportionment is $700 short of mine, mine being $7,200 and theirs $6,500. In 1918 there is only a little less than 20 per cent difference in their expense ratio. The ratios for this suit 42.87 and the average expense 41.02. They have again charged us with commissions about 5 per cent higher than the average. They have made a quite liberal charge for inspections and surveys. They paid to the Missouri Inspection Bureau $929 and charged Missouri with $3,371. But for taxes they are paying on $88,995 of premiums and they have charged only $2,051 for taxes, which is a little short on the tax charge. Then they are a little short again on their apportionment, so that the excess commission charged and the excess charged on inspections and surveys just about counterbalance the low charge on taxes and on apportioned items; making the difference not very great in the general result.

[fol. 2009] The Referee: The results in each instance, then, in this particular year, Mr. McGee, are about the same whether you follow the method which you follow or the method which the company followed?

A. Well, I haven't been giving—there is a very little difference. On the first year my figures landed me with 40.07 per cent, which was a little—nearly three per cent below the company's reported figures here and not quite one per cent—no, one-tenth of one per cent above the average; didn't always hit it quite that close, however.

Mr. Barker:

Q. Mr. McGee, just a moment. I understood it had been testified here in chief in the plaintiff's case that the insur-

ance method of apportioning the expense was to take the total volume of premiums of the United States and the total volume of premiums as produced by each state and then apportion the expense in proportion to the volume of business produced by each state as compared with the United States, is that right?

A. Yes, sir.

Mr. Barker: They all testified to it.

Mr. Hyde: The court asked him that question two or three times.

Mr. Barker: Does the court understand my question?

The Referee: Yes.

The Witness: Here is another very low expense company, the Pacific Fire Insurance Company.

Mr. Folonie (interrupting): My silence is not to be taken as given consent to the gentleman's rather incorrect——

[fol. 2610] The Referee: The court is not misled by silence into believing that anybody consents to anything.

Mr. Barker: I thought there was no dispute about that, but some of our people thought there might be.

Q. What company are you on now?

A. The Pacific Fire Insurance Company. In '17 they reported Missouri expense 27.94 per cent. Their average expense was 25.38. A very small difference there. They make an undercharge on inspections there because they actually pay to the Missouri Inspection Bureau $223 and they charge Missouri with $138 only. On taxes they are paying on $15,000 premiums and they charge $844 which is an overcharge that a little over counterbalances the undercharge on inspection and surveys, so that the difference in that year is slight. In 1918 they report in this suit expense ratio of 35.91, and their average expense was 27.33; the difference in that year is very largely in the apportioned items. They charge us a little high on inspections and surveys, having paid the Missouri Inspection Bureau $232 and charged Missouri with $584. But when it comes to apportioned items there is $123,985 to be apportioned. The Missouri business is 1.38 of the total, gives us an apportionment of a little over $1,700. They have apportioned us $2,920. In 1919 expenses reported in this suit, $34.74; average ex-

pense 30.1. Their field supervision which appears in this runs considerably above the average cost of field supervision for them. In fact, they charge Missouri with one-sixth of the total of their field supervision. They charge high again on inspection and surveys. They paid the rating bureau $353 and they charge Missouri with $839.

[fol. 2611] The Referee: How does the volume of business done in Missouri correspond with the volume of business done throughout the remainder of the United States?

A. The Missouri business is 1.44 per cent of the total business. In 1920 the expense ratio in this suit is 30.31. The average expense 31.35. A little bit over the Missouri report. Now, this year they have fallen a little short on their inspections and surveys; paid the Missouri Inspection Bureau $464 and charged Missouri with only $539. Also fallen a little short on taxes, paid on $86,988 premiums and charged only $588 which is only slightly in excess of the two per cent premium tax. But they made up for that in their apportioned items. The amount to be apportioned is $121,201 and the Missouri business is 3.61 per cent of the total, giving an apportionment of a little over $4,300, while they apportion a little over $4,800. 1921, they have gone the other way and gotten below their average considerably; ratio reported in this suit, 31.92; average expense, 35.15.

Mr. Folonie: It was the same way the year before, wasn't it?

A. Only it is a little more this time, that is all.

Mr. Folonie: You said "the other way"; a little more the same way you mean?

A. Well, they were nearly together before; and the difference is found practically where it was in the other. They charge for inspections and surveys, $2,500 less than they actually paid the Missouri Inspection Bureau, and their taxes are low. They have run their apportionment about $1,100 higher than mine, but it still leaves them below their average expense.

[fol. 2612] Mr. Folonie:

Q. What were those tax items?

A. I didn't give any figures on that, did I? It is about five or six hundred dollars low, but I didn't give any figure. Pennsylvania Fire Insurance Company of Philadelphia,

expense reported in this suit 68.57 Average 37.87. Their average commissions paid were 22.4 and they charge us with 34 per cent. Their Missouri business is 1.95 per cent of the total and the total of the items to be apportioned are $262,709, which gives them an apportionment of $5,122 that they have apportioned as $17,700. I believe that is about the only year that—no—1918 the difference is very slight; practically all accounted for by pretty high inspection charges and pretty high taxes. Paid Inspection Bureau $1,109 and charged Missouri with $2,789. And they charge us taxes at the rate of a trifle over seven per cent. In 1919 there is a difference of only two per cent. They charge us high commission there, about four per cent above their average. Charge us pretty high for inspections and surveys and on their apportionment, the Missouri business is 2.44 of the business, $480,283, total of the apportioned items, $233. Giving an apportionment of a little over $11,000, while they have apportioned only a little over $7,000.

Mr. Folonie: That is another case where we give you the best of it to cover our iniquity.

A. Yes.

Mr. Folonie: Looks like we kind of over did that, General. {fol. 2613} Mr. Barker: I haven't been calling attention to these enormous frauds that have been worked on us, but I will from now on. Go ahead.

The Witness: In 1920 the expense reported in this suit was 49.76, average expense 40.62; average commissions paid were 21.3 and they charge Missouri with 48.1. Inspections and surveys they paid the Missouri Inspection Bureau $1,153 and charge Missouri with $4,113.

Mr. Barker:

Q. What is that, only paying $1,100 and charge us with $4,100?

A. $4,117.

Mr. Folonie: That is pretty close for the General.

Mr. Barker: That is certainly rough on us.

The Witness: Paying taxes on $116,000 of premiums and charge us with $5,951.

Mr. Barker: What is that? I didn't get that.

A. I said paying taxes on a basis of $116,000 of premiums and charges us $5,951 for taxes. The apportionment

of Missouri business is 2.99 per cent of the total, the amount to be apportioned is $535,754, giving us an apportionment of $16,019. They apportion us $18,858.

Mr. Barker: Apportion more expense against us than they actually spent?

Mr. Hogsett: That is not what he said, General.

Mr. Barker: Q. How much did they beat us on that apportionment, Mr. McGee?

A. Oh, a couple of thousand dollars. They were mild on that one.

Mr. Barker: Q. Beat us only two thousand on it?

A. Yes.

[fol. 2614] Mr. Barker: Well, I wouldn't have said anything if that is all. I thought Mr. Hogsett misunderstood you.

The Witness: 1921, expense in this suit 56.4, average expense 50.58. That is a high commission again, average commission paid 23.4 and charge Missouri 47.88. The apportionment is also a little high. Missouri business is 3.26 of the total business. Amount to be apportioned $598,493, gives us an apportionment of $19,410, while they apportion $21,854.

Mr. Barker: Two thousand dollars against us there, eh?

A. Yes.

The Witness: This one didn't have much chance at us, they only had one year but they did pretty well. Expense report in this suit——

Mr. Polonie (interrupting): What company is this?

A. Standard Fire of New Jersey. Expense reported in this suit 182.24, average expense 40.77.

Mr. Barker: I beg your pardon. I didn't understand that. What expense did they charge Missouri?

A. 182.24.

Q. Per cent for doing business here?

A. Yes. In other words, they took in $3,846 in premiums and it cost them $7,009 to get them.

Mr. Hogsett: Did that company enter the state during that year?

A. They came in—admitted April 30th.

[fol. 2615] Mr. Hogsett: Of that year?

A. Yes.

Mr. Hogsett: You know, as a matter of fact, that the company entering the state the first year usually has an expense ratio in excess of the premium income, don't you?

Mr. Barker: I never heard of one 182.

Mr. Hogsett: I am not asking you that.

Mr. Barker: Oh, I thought you were asking me.

Mr. Hogsett: No, I am asking the witness.

Q. You know that that is a common occurrence when a company enters a state that the expense the first year or certainly the first nine months of the year is commonly in excess of the premium income for that year, don't you?

A. No, sir.

Mr. Hogsett: Q. Sir?

A. No, sir.

Mr. Hogsett: Q. Isn't it true that that expense ratio is very high for the first year that a company does business in the state?

A. No, sir—it may be high but it isn't that high.

Mr. Hogsett: Q. Well, how high does it run—because—companies of the size of this one entering the state? Have you at hand any figures by which you can give us that information?

A. I have several companies in this list here who entered the state during this five year period and not one of them—some of them were in one year, some two years and some three, and not one of them taxes up any such per cent—if you will wait until I finish this expense ratio, you will see where they did it. They didn't pay.

[fol. 2616] Mr. Hogsett: Q. Answer the question, whether or not a company of the size of this one entering a state, this state or any other, commonly has an expense ratio in proportion to its premium income for the first year that is very high, much higher?

A. Frequently does have a higher expense. It is entitled to a higher expense.

Mr. Hogsett: Well, why is that?

A. Certainly. It costs money to establish new business anywhere, they are establishing agency plants, their traveling expense and supplies to be furnished those agents. Admittedly their expense in establishing themselves in a new

state would be higher than one where they are already established and I am not arguing that for a moment, but they don't affect this one.

Mr. Folonie: The last figures were 182——

A. Their total expense there was $7,089.

Mr. Folonie: Premiums how much?

A. $7,089 was their total expense.

Mr. Folonie:

Q. And premiums how much?

A. $3,846. Now, $1,353—$1,360 rather of that was agent's commissions and allowances. $1,353 commissions, $7 allowance. Which runs a little above their average commission of 30 per cent, but I will say that that commission is justifiable because all of their business—all of this business for this year was in St. Louis—commission business. They paid to the Inspection Bureau $100 and they make no charge in their Missouri expenses at all.

The Referee: For that item?

[fol. 2617] A. For that item. They paid no taxes, of course, in the state that year, but they did pay an Insurance Department admission fee of $61. The only trouble with their expense is they got the decimal point in the wrong place when they made the apportionment. Their expense is six-tenths of one per cent and they have apportioned six per cent. So that they apportioned to us—the total amount of the apportioned item, which is $72,624, and they have apportioned six per cent of that to us instead of six tenths of one per cent. That is the trouble for their expense. They didn't know where to put the decimal point——

Mr. Barker (interrupting): How much did we lose by that?

A. (Continuing:) But they swore they had it in the right place. Now, here is a batch of companies. I am not going to go through all of them. There are five companies in this office, it is the Starkweather Shipley group, four French companies and one United States company. These expenses here of that group the companies don't run so very much in excess of the average expense, but they are handled

on what I would suppose you would term a general agency contract in which the commission is supposed to cover practically — of the expense except inspection, surveys and taxes. May be some other slight items outside of that, but not very much. The commission is supposed to cover practically all of it. And consequently these are high commission companies as it carries the bulk of their expenses in the commissions. Instead of coming out straight with their ex-[fol. 2618] penses and charging their commissions what they were, they have charged commissions straight through—or not straight through but have in most cases charged a low commission and then when it came down to the apportionment here they tried to even it up by apportioning more than they have had. Take the Phœnix here, one of that group, and that will show you as well as anything else, they make a direct charge up there that covers all that they are possibly entitled to for inspections and surveys, and outside of that item the total amount to be apportioned is $469. They apportioned $1,375. That is 1917. 1918 is the same thing. The total left to be apportioned is $724 and they apportion us $1,734.

Mr. Folonie: I understand you, Mr. McGee, that instead of putting this in the expense—in the commission item, they have deducted from commission and put it to miscellaneous or something else, and in other words, maybe you can answer it this way easier; is the total wrong or is the apportionment of it wrong?

A. The totals are not very far off—wait a minute until I get around there to show you the paper, the way they handle it.

Mr. Folonie: Q. The apportionment, is that what you mean, rather than the totals?

A. Yes. Here is the total paid in all states (exhibiting document to counsel). It seems absurd that companies would adopt that kind of a method showing their expenses when there are five companies in that group and the five companies are handled in the same way.

[fol. 2619] Mr. Folonie: Q. In other words, their bookkeeping—you don't like their way of bookkeeping and dividing it?

A. No. It is bound to mix things up and bound to get it wrong. Now, their expense is irregular there. Some

years high and some low, but the average expense through the term of all five companies is practically correct.

Mr. Hogsett: Well, then, the net result you get in figuring the expense of that group is substantially correct, isn't it?

A. Yes, on that group. London and Lancashire Fire of England. In 1917 they reported in this suit 43.48 per cent expense. Their average expense is 39.41. Practically all of it—all of the difference is due to a high commission charge, the average commission being only 15.7 per cent, while they charged Missouri with 23 per cent. They are also pretty liberal in their inspection and survey charges. They paid the Missouri Inspection Bureau $1,095 and charged Missouri $7,378.

Mr. Barker:

Q. How much did we lose on that?

A. Lost enough.

Mr. Folonie: Object to assuming you lost anything.

Mr. Barker: Well, if Mr. Folonie can take pleasure when it is his way, I assume I can when it is my way.

Mr. Hogsett: We want you to have all the pleasure you can, but we want you to have your facts right.

The Witness: They charge us with nearly $4,000 expense there which they didn't pay.

Mr. Folonie: Oh, no.

[fol. 2620] Mr. Barker: I will ask him about it, then. How much did they pay the Inspection Bureau?

A. $1,795.

Q. How much did they charge us in this lawsuit and swear they paid?

Mr. Folonie: To the Inspection Bureau?

Mr. Barker: Yes.

A. Just charge—this charge, General, includes some other bureaus.

Q. All right, what are they?

A. The National Bureaus. The outside charge I would say on that, from figuring others, would be about twice

the amount paid, one and one-half to two times the amount paid the Missouri Inspection Bureau. There ours were four times that.

Mr. Folonie: Object to their charge as to what it ought to be as distinguished from what it is as a conclusion, not binding on the court and not competent.

Mr. Barker: I didn't understand the——

Mr. Folonie: Just a moment. I would like a ruling on that.

Mr. Barker: Withdraw the question; try to keep Mr. Folonie from injecting these remarks, if I can, it is pretty hard to do.

The Witness: In 1918 they report in this suit, expense 46.37; their average expense is 41.2. And the difference comes in adjustments in the previous year. In commissions they charge for inspections and surveys. Commissions they paid were 15.1. They charged Missouri with 21. [fol. 2621] They paid Missouri Inspection Bureau $1,186 and charged Missouri with $4,436. In 1919 the expense reported in this suit is $47.31; the average expense 43.53; average commission paid was 16 per cent. They charged Missouri with about 22 or 23. I haven't figured that one; approximately 23 per cent. They paid the Inspection bureau this year $1,011 and charged Missouri with $4,726. 1920 they report expense in this suit of 38.57; average expense was 43.2. Their commissions were 16 per cent. They charged Missouri with about 40 per cent. They paid the Missouri Inspection Bureau $3158 and charged Missouri with $5797—which is not so far out of the way as some of the others. Taxes they have made a charge there for premiums on 127—taxes on $127,000 of premiums and they have charged $2700, which is high. When it comes to apportionment they have dropped down so that they have gotten their Missouri expenses five per cent below the average. The Missouri business is 5.47 of the total business and the amount to be apportioned is $400,383, giving an apportionment of a little over $25,000, and they have apportioned only $16,829. In 1921 they reported in this suit an expense of $59.11, the average expense was 48.54; their average commission paid was 16 per cent. They

charged Missouri with about 26 or 27 per cent. They paid to the Missouri Inspection Bureau $2842 and $300 less than they did the last year, and charged Missouri with $855—nearly double what they charged the year before. But on taxes now they are paying taxes on $233,000 of premiums. The premium tax alone would be over $4600. [fol. 2622] They charge Missouri with $2981 taxes.

Mr. Folonie: Q. Now, have you gone through all of the figures of this company to tell us whether the total of their figures is materially wrong or is it the apportionment that you complain of with this company primarily?

A. I consider those charges too high, Mr. Folonie.

Mr. Folonie: Q. No, but I am talking about the total of your figures and the total of the figures in evidence. How do they compare? To see whether your figures are higher or lower.

A. My figures run out 39 per cent in '18, compared with 43.48 for theirs; in '18, 41.73 compared with 46.37 for theirs; in '19 my figures run out 42.41 as compared with 47.31 for theirs. In 1920 my figures run 40.76 as against 38.57 for theirs.

Mr. Folonie: How much in dollars was it for that year? You gave it in dollars for the other years.

A. No, I was giving you the per cent between my figures and theirs.

Mr. Hogsett: The net result is, some times the variance is one way and some times the other?

A. No.

Mr. Folonie: Have you added the five years as you have computed it and as we have computed it to tell us what the difference is?

A. No. Four of them are high and one of them a little low, that is how they stacked up.

The Referee: Adjourned until ten o'clock to-morrow morning, gentlemen.

(Whereupon an adjournment was taken until the following morning, at ten o'clock a. m., the same being Tuesday, May 6, 1924, at which time parties reconvened at the same [fol. 2623] place, and the following proceedings were had:)

Mr E. G. McGee, recalled to the stand for further direct examination on behalf of the defendant, having been previously sworn, was examined and testified as follows:

Direct examination continued by Mr. Barker:

Q. Mr. McGee, what were the unearned premiums reported by all of these companies at the beginning of this five-year period, January 1, 1917?

A. $8,372,804.

Mr. Folonie: Is that according to the figures here in evidence?

A. Yes, sir; the company figures.

Mr. Barker:

Q. What were the unearned premiums at the close of the period January 1st, 1922, as disclosed by the evidence in this suit?

A. '21 you mean, don't you, instead of '22?

Q. I missed it one day. That is pretty close for a lawyer. December 31st, then, 1921, instead of January 1st, 1922. One day's difference.

A. $17,061,209.00.

Q. Now, are you familiar with the different methods of figuring underwriting profit, Mr. McGee?

A. Well, there are three——

Q. (Interrupting.) I said, are you familiar with them?

A. I am familiar with three of them.

Q. Well, are you familiar with what is known as the earned premium theory as used by the companies in this suit?

A. Yes, sir.

[fol. 2624] Q. Are you familiar with what is known as the written or paid premium basis?

A. Yes, sir.

Q. Are you familiar with what is known as the foreign or British method of figuring underwriting profit?

A. Yes, sir.

Q. Who is E. G. Richards?

A. He is a publisher of several works on insurance, one that I recall on "Experience Rating." Another little pamphlet on the "Method of figuring profits of insurance companies." He was at one time, I believe, president of

the National Board of Fire Underwriters and for 20 years or more general manager of the North British & Mercantile group of fire insurance companies.

Q. Are you familiar with what is known in the insurance world as the E. G. Richards' method of figuring underwriting profit and losses?

A. Yes, sir.

Q. Now, explain to the court, please, the method used by the plaintiffs in this suit of figuring underwriting profit or loss on the earned premium basis.

A. To arrive at the earned premiums we take the written premiums for the term—for the five-year term; add to it the unearned premiums at the beginning of the term. Subtract from that the amount of the unearned premiums at the end of the term—or you might shorten the calculation a trifle by taking the difference between the two amounts of unearned premiums.

Mr. Folonie: Q. And adding or subtracting it from the written figure?

A. And subtracting from the written.

Mr. Folonie: Q. Pardon me, but I knew you had left your [fol. 2625] thought incomplete, Mr. McGee.

A. Yes.

Mr. Barker:

Q. On the earned premium basis as testified by the companies in this suit is a different condition reflected according to the fact as to whether or not there is an increase of business during the period examined or a decrease of business? Is there a different reflection in those situations?

A. There is a very different one, yes, sir.

Q. If your unearned premium at the beginning of the period is less than the unearned premium at the end of the period, it would reflect a certain condition in that event, would it?

A. Yes, sir.

Q. In case the unearned premium at the beginning of the period was less than the unearned premium at the end of the period, that would reflect another condition, would it?

A. Yes, sir.

Q. Is what is known as the earned premium method as adopted by the companies in this suit a settled and determined and positive method, or is it based purely upon speculation and guess?

Mr. Hogsett: Objected to as calling for a conclusion of the witness and invading the province of the trier of the fact and the law.

Mr. Barker: This man is here for that purpose.

Mr. Hogsett: To invade the province of the court?

Mr. Barker: Absolutely. He is an expert. That is what he is here for; to advise the court on these subjects. That is what makes his testimony admissible. Tell the court [fol. 2626] whether—the court can take it or reject it as he sees fit.

The Referee: Overruled.

(To which action and ruling of the referee, plaintiffs, by counsel then and there duly excepted and still except.)

(Question read by the reporter.)

A. Well, it is based on indefinite figures; figures that can not be ascertained exactly, and it doesn't under varying conditions represent the true condition of the company.

Q. Now, in order to figure on the earned basis, surely you must have an unearned premium to begin with at the beginning of the period, is that right?

A. Yes, sir.

Q. Now, is there any way whereby the state can check the accuracy or the truth of the unearned premium at the beginning of the period or must they accept the statement of the companies?

A. There can be no definite check of it.

Q. Is that your answer, Mr. McGee?

A. Yes, sir.

Q. So that for the purpose of this lawsuit, in order to figure at all on the earned basis as suggested by the companies, you must start out by accepting without question the unearned premiums which they submit at the beginning of the inquiry?

A. Yes, sir.

Q. Now, was there an increase of premiums or a decrease in premiums during this five-year period in question?

A. There was an increase in premium income from four [fol. 2627] years of the period, the fifth year premiums decrease somewhat from the year before.

Q. Was it what has been called in this hearing an ascending scale of business or a descending scale of business?

A. It was an ascending scale.

Q. Now, in an ascending scale of business such as develops in this five-year inquiry, you start with your unearned figure at the beginning and you add all of the written premiums of that period to that and then at the end of the period, December 31st, 1921, you deduct all of the unearned premiums in order to arrive at that conclusion, is that right?

A. At the earned premium, yes, sir.

Q. That is the way you arrive at the earned premium at the end of the period?

A. Yes, sir.

Q. Now, then, if there is a smaller unearned premium at the beginning of the period and an ascending scale of business which makes a larger unearned premium at the end of the period, there, of course, is more to deduct at the end than at the beginning?

A. Yes, sir.

Q. Now, at the beginning of this period there was substantially eight million dollars in unearned premiums?

A. Yes, sir.

Q. And at the end of the period there were seventeen million dollars of unearned premiums?

A. Yes, sir.

Q. Does that increase in that unearned premium represent a profit which the companies made during that period?

A. It is a fund that they have accumulated in addition to [fol. 2628] having paid all losses and expenses of the business and I believe could be justly called a profit or an earning of the company during that period.

Q. At the end of the period when those companies report in this lawsuit an excess of seventeen million dollars of unearned premiums at the end of the period, all the losses and all the expenses, the operation and conduct of the business during that time have been paid?

A. Yes, sir.

Q. What charge, then, if any, is there against this unearned premium at the end of the period?

A. If it is a going concern, continues in business, the only charge that I can see that can be made against that would be for returned premiums on canceled policies.

Q. It has been testified numerous times in this lawsuit that that amounts to about twenty per cent—is that about right?

Mr. Folonie: I think the testimony is 25, if the court please.

Mr. Barker: 20 to 25, Mr. Folonie.

A. I think that would not be correct as to this premium reserve, and for this reason: the great bulk of those cancellations are made in the first year of the policy and are deducted and the amount of premium reserve is on the net premium. After that deduction is made.

Mr. Barker:

Q. The testimony, I believe, Mr. McGee, was that 20 to 25 per cent of the premium was returned to the policyholder in case of cancellation, and not of the reserve.

[fol. 2629] Mr. Folonie: No, it was the other way, John.

Mr. Barker: Of the reserve?

Mr. Folonie: Yes. Mr. Frogatt that the referee asked what proportions went back by way of cancellations and he said 25 per cent.

Mr. Barker: Well, I don't understand that testimony like Mr. Folonie. He may be right.

Q. That would be, then, about forty per cent of their total writings, would it not, Mr. McGee—if that basis was adopted, because only fifty per cent is figured on the unearned premium reserve, is it not?

A. No, there is more than fifty per cent in the unearned premium reserve. There is eighty per cent of the one year business. Perrentage is increased on the term business to as high as ninety per cent.

Q. Would it be forty per cent or more of their total writings?

A. I have never seen any definite figures on that, I doubt it.

Q. If they returned twenty per cent of their net premium, would that result ensue?

A. I don't understand the question.

Q. Oh, well, I will withdraw it. I don't think it has anything to do with the lawsuit, anyway. Mr. McGee, you have told me the result of favoring the earned premium basis on an ascending scale of business. Now, tell the court the result on a descending scale of business?

A. The result on a descending scale of business would be practically the reverse of what it is on an ascending scale. A calculation would be made in the same way but [fol. 2630] you would have at the beginning of the period a larger volume of unearned premiums than you would at the end of the period, and consequently your earned premiums would be greater than your written premiums, while on the ascending scale you start with a smaller volume at the beginning of the period, have a larger volume of unearned premiums at the end, which results in a decrease, making your earned premiums less than the written premiums.

Q. In either event, on an ascending scale of business during the period for a descending scale of business and as the result reached reflect the true conditions of the companies?

A. It does not.

Q. Now, on an ascending scale of business as this was, and on an earned premium basis, business increasing during the period, what underwriting profit or loss did the company show in this lawsuit?

A. It shows an underwriting loss of $7,384,262.

Mr. Folonie: Is that on the earned basis?

A. Yes, sir.

The Referee: What does that indicate as to actual loss of the companies during the period in question, Mr. McGee?

A. It doesn't show the actual loss at all.

The Referee: The question was a little broader than the answer. What does it indicate?

A. The answer indicates more than anything else, Your Honor, the incorrectness of the method of figuring profit in that way. Does that answer the question?

The Referee: Yes.

[fol. 2631] Mr. Barker:

Q. Now, then, Mr. McGee, what were the written premiums of the companies, if you have them, year by year, from '17 to '21?

A. In '17 written premiums were $11,877,758. In '18, $13,609,460; in '19 they were $16,172,844; in '20 they were $21,895,057; in '21, they were $19,945,062.

Mr. Folonie: May I ask you the source of these figures, Mr. McGee?

A. They are the figures shown in your exhibit filed in this suit.

Mr. Folonie: I wanted to know whether you got that from the exhibit or from an independent source?

A. They are from your summary.

Mr. Barker:

Q. Those were written premiums in Missouri?

A. Yes, sir.

Q. What are the total of those written premiums in Missouri for that period?

A. $83,802,181.00.

Q. Now, Mr. McGee, you have testified that on those figures a total in excess of $83,000,000 of written premiums for the five-year period the companies reported an underwriting loss in excess of seven million dollars?

A. Yes, sir.

Q. Take for me the same amount of premiums in excess of $83,000,000 and instead of showing them in an ascending scale of business, show the same premiums on a descending scale of business, that is, more in 1917, less in '18, less in '19, less in '20, less in '21, but making up the same total and tell the court on the earned premium basis what profit or loss that would show the companies.

A. It would show a profit of $9,992,508.

[fol. 2632] Q. And yet you use the same volume of business, but change the year in which it was received?

A. That is all the change. The total premiums are the same, and the total paid losses are the same and the total paid expenses are the same.

Q. And you are not figuring anything in the way of investment at all—this is pure underwriting?

A. This is pure underwriting.

Q. Then tell the court whether or not on an ascending scale of business, when the business is healthy and prosperous and increases year by year, the purpose of the earned theory in that event is designed and will always show a loss—while to the contrary if the business appears to be breaking down, less premiums received each year and poor business, that will tend to reflect an abnormal profit in favor of the companies.

Mr. Folonie: We object as argumentation.

The Referee: I think the question is objectionable in so far as the use of the word intended is involved.

Mr. Barker: Very well, I will withdraw that.

The Referee: The rest of the question as to where he asked whether or not that would be the result——

Mr. Barker (interrupting): I will ask it in another way.

Q. On the earned premium theory adopted by the companies in this suit, where there is an increase in business each year, more premiums being received, a healthy flushing condition of the company, will that tend to reflect under the earned premium theory a profit or a loss of that method of computation?

[fol. 2633] A. It will tend to show either a loss or a very decreased profit, dependent to some extent on the rapidity of the increase in volume of business during the period.

Q. Now, then, under the earned premium theory where there is a falling off of business each year and an unhealthy condition, depression in the country, a lessening of receipts each year received by the companies, what will that result show?

A. It will tend to show a profit or at least a very much decreased loss.

The Referee: By decreased loss there, Mr. McGee, do you mean a loss less than the actual loss?

A. That is not very clear. I mean as compared with the ascending scale of business. That was the thought I had in my mind. The answer did not express it, however.

Mr. Folonie: Comparatively?

A. Yes.

Mr. Barker:

Q. Now, taking this same volume of premiums as we have reported, with the volume of business increasing each year as shown in evidence, you state the companies in this lawsuit report a loss of $7,384,862, is that right?

A. Yes, sir.

Q. Now, with the same volume of premiums used and with the volume of business decreasing in just the same proportion that it increased in this five-year period, and using exactly the same total premiums received, what is the showing?

A. Shows a profit of $9,992,508.

Q. Now, take a condition under the earned premium theory, with the volume of business increasing and decreasing from year to year and using the same premiums, the [fol. 2634] same losses and the same expenses, what would that show?

A. Showing the same premiums as during the actual five years we have under consideration, it shows a profit of $3,543,104.

Mr. Barker: Read that question.

Mr. Folonie: Yes, I was trying to sense the difference.

The Referee: Yes, read the question, please.

(Question read.)

Mr. Barker: Now read the answer.

(Answer read by the reporter.)

Mr. Barker:

Q. Therefore, Mr. McGee, you think the same sum for their premiums received, the same sum for losses and expenses paid, on the earned premium basis you can reach three different conclusions, can you?

A. Yes, and you might very easily reach two or three more by shifting the figures a little more as to the time the money was received.

The Referee: As, for example, do you mean, Mr. McGee, assuming in the period under investigation here that there was a loss or a decline over the previous year's business, say in the fifth year now, if you took that same condition

and same amount with reference to the first year, would a different result be reached?

A. It would make some difference in the result, yes, sir.

Mr. Barker:

Q. Do you know whether—I don't know whether I have made this matter entirely clear, Mr. McGee. I want to ask one question to clear it up. Now, let us start out and take [fol. 2635] the volume of premiums which the companies in this lawsuit reported that they took in from citizens of Missouri during this five-year period. Now, let us accept the losses and expenses which they claim in this lawsuit they paid. Now, in figuring on the earned premium basis, accept those figures as I have given them to you, will the different results which you have enumerated ensue or follow, by using the earned premium basis?

A. Yes, sir.

Q. Now, any condition which will allow you to take the same number of dollars and cents received, accept the same losses and expenses paid and which will show three different conclusions, is that a proper system of accounting?

A. It is not because it makes the profit or loss dependent on the time when the money was received and not on the receipts and disbursements.

Q. Now, Mr. McGee, let's take up what is known as the Richards method of figuring underwriting profit and loss and using the same figures as submitted by the companies in this lawsuit as to premiums, losses and expenses, with the volume of business increasing, as in this five-year period, what profit or loss is shown?

Mr. Folonie: Do I understand this is made now from the exhibits in evidence exclusively?

The Witness: Using the same figures all the way through, Mr. Folonie.

Mr. Folonie:

Q. Not going outside of those figures for your information?

A. No; just the same figures all through these illustrations here. You will find this same $83,000,000 cropping up all the way through.

[fol. 2636] Mr. Folonie: You have answered. Thank you.

Mr. Barker: Did you answer the question?

A. No. I lost your question, general.

Mr. Barker: Read the question.

(Question read by the reporter.)

A. By the Richards method of figuring profit, the increasing premiums of this five-year period would show an underwriting loss of $2,973,737.

Q. Now, using the same premiums, the same losses and the same expenses as testified to in this lawsuit and with the volume of business decreasing in just the same proportion that it increased in this five-year period, what result would that show—under the Richards method?

A. It would show an underwriting profit of $10,493,288.

The Referee: Just a moment. In these two questions, Mr. McGee, do you start the basis of comparison with the amount that the companies showed in the first year of the period and then take into consideration an increase from that base and a decrease from that base, or are you simply reversing the figures for the five-year period?

A. Simply reversing the figures for the five-year period.

Q. In other words, you are treating the fifth year as if it were the first, and so on?

A. Yes, sir.

Mr. Barker: In other words, Mr. McGee, with the same amount of premiums, the same amount of expenses, and the same losses, with the volume of business on an increasing or ascending scale of business, with the same figures it shows a loss of $2,933,737?

A. Yes, sir.

[fol. 2637] Q. And with the same figures and the same losses and the same expenses, but on a decreasing scale of business or taking as Judge Williamson says the money received in '21 and putting it to '17, and money received in '20 and putting it to '18, and so on, this theory shows an underwriting profit on the same figures of $10,493,288?

A. Yes, sir.

Q. Now, explain the difference between the Richards theory and the earned premium theory as adopted by the companies in this suit.

A. Mr. Richards' theory is that there is a profit to the companies in that increase in unearned premium reserve.

The reason he gives for that is that there can be nothing paid out of that increase except the amount necessary for the payment of returned premiums on canceled policies and whatever losses might accrue from these policies now in force and he holds that 55 per cent is ample to cover both of these items. So instead of deducting the total amount of the increase in unearned premiums, Mr. Richards deducts only 55 per cent of it, so that whereas the straight earned premium method advocated by the companies taxes that at one hundred per cent, the Richards method taxes it at 55 per cent, which makes considerable difference in the losses by the two methods.

Q. Now, explain to the court what is known as the Foreign or British method of figuring underwriting profit and loss.

A. The foreign method is the same as Mr. Richards', except that they assume 50 per cent instead of 55 per cent, which would show a slightly decreased loss under the five years that we have under consideration, but the same profit. [fol. 2638] Q. Have you figured the profit and loss and have you them before you on the foreign method?

A. I have not. I figured only the two methods, the method advocated by the companies and by Mr. Richards. The foreign method is so similar to Mr. Richards' that I didn't make any figures on it.

Q. Now, what is known as the written premium basis of figuring underwriting profit or loss?

A. That is using the premiums written or received, the losses paid, and the expenses paid.

Q. Have you made a tabulation on that basis?

A. Yes, sir.

Q. What do these figures show on that basis—as introduced in evidence in this case?

A. As based upon the premiums received and losses and expenses paid as shown by the companies in this suit, it shows an underwriting profit of $3,341,124.

Mr. Hogsett: Isn't that 421—haven't you got those last three figures reversed?

Mr. Barker: We will check that over pretty soon. He may have got those turned around.

The Witness: I don't think I have, Mr. Hogsett.

Mr. Hogsett: All right.

Mr. Barker:

Q. Now, then, Mr. McGee, using the same figures——

Mr. Hogsett (interrupting): If we are that near alike, we can just deduct that $300 from the master's fees here and adjourn this case.

The Referee: This hearing is permanently adjourned right now.

[fol. 2639] Mr. Barker:

Q. Now, Mr. McGee, in checking these same figures as submitted by these companies in this lawsuit on what is known as the earned premium basis, you can show a loss of $7,384,262, on an ascending scale of business, or with the same figures on a descending scale of business you can show a profit of $9,992,580 and on the Richards theory, accepting the same figures on an increased volume of business you can show a loss of $2,973,737 and with the same figures on a decreasing scale of business you just show a profit of $10,493,288 and on the written premium basis you can show an underwriting profit of $3,341,124, isn't that right?

A. Yes, sir.

The Referee:

Q. Is that last on the ascending or descending scale?

The Witness: That is on the annual business of the five years ascending.

Mr. Barker: Just as they reported; show a profit of three million and something.

The Witness: It would make no difference in this whether it was ascending or descending. The result would be the same.

Mr. Folonie: Does your profit calculation—is the conflagration figure in this at all, in any of these?

A. No, sir.

Mr. Barker:

Q. Mr. Folonie asked you if the conflagration figured in it. I will ask you if it is not true that during this five year' per-od just past the companies paid all of their losses, including conflagration, and everything else?

A. Yes, sir.

[fol. 2640] Q. Now, if you would add it now, it would be a clear duplication, would it not?

A. It certainly would.

Q. In other words, having paid it they can't charge it against us, can they?

A. Not justly.

Q. Now, then, on the written premium basis, does it make any difference for a total period as in this case whether the business is descending or ascending?

A. It does not.

Q. Mr. McGee, have you made tabulations as to the investment exhibit from the annual statements of the fire insurance company for the period in question, '17 to '21, inclusive?

A. Yes, sir.

Q. How do they report their investment income to Missouri?

A. They don't report it by states at all.

Q. How was it reported?

A. The total business of the United States.

Q. How, then, if at all, is it apportioned to Missouri?

A. The only way it could be apportioned to Missouri would be the proportion that the Missouri premiums bear to the total premiums in the United States.

Q. How do the companies in this lawsuit apportion their expenses throughout the United States to Missouri?

A. They apportion them on the basis, or in that proportion, rather, that the Missouri net premiums bear to the total net premiums in the United States.

The Referee: What do you mean by net premiums there, Mr. McGee?

A. Those are the premiums used by the companies here, Judge, being the gross premium written less premiums paid [fol. 2641] for reinsurance on portions of the business and return premiums on policies canceled.

Mr. Folonie: You left out the assumed reinsurance.

A. Haven't collected them yet.

Mr. Folonie: It enters into the net figure, though; ultimate net figure.

The Witness: It is in there. That is business written. The net premium is the gross premium received less reinsurance—that is the only deductions from it to get the net.

Mr. Barker:

Q. Now, take up the interest, rent earned, investment profit and the total income from investment less investment expense, and so forth, and detail those to the court, please.

Mr. Folonie: We object, if the court please, to admitting any evidence of investment earnings of the plaintiff, and we object upon the ground that there is no proof and not tending to prove that earnings were made in the State of Missouri or that the same are properly to be considered in determining the profit or loss of the conduct of business in the State of Missouri; furthermore, on the ground that to permit proof of earnings in an activity distinct from that here under consideration, and to take any part of the earnings upon the investment of the companies as distinguished from their business of insurance and apply the same upon the — or to decrease or increase the supposed profits or the losses shown in the state would operate to deprive the plaintiffs, and each of them, of their rights and privileges guar- [fol. 2642] anteed by the 14th Amendment to the Constitution of the United States, take their property without due process of law, deny them the equal protection of the laws, is violative of the Constitution of the State of Missouri in depriving them of their property without due process of law, and denying them the equal protection of the law.

Mr. Hogsett: And for the further reason, may I add, that this proceeding relates to a rate reduction order made on the 9th day of October, 1922, to become effective on the 15th of November, 1922, and therefore it must be governed by the law as it existed at that time, namely, by the act of 1915, and that that act on its face does not contemplate that any part of the earnings or profits from the investment end of the companies' business shall enter into the accounting of profits or loss to be calculated by the commissioner in regulating or reducing rates. That the act of 1923 which the defendant contends enters into and affects that matter could not affect it for the reason that to so construe it would mean that it would be void as a retrospective law; the 1923 amendment having not gone into effect until June of 1923.

Mr. Folonie: He stated a thought that compels me to add to the objection further, that to construe the 1923 statute as applicable herein would operate to deprive the plaintiffs,

and each of them, of their constitutional rights and guarantees already mentioned and called to the court's attention, and that the said statute of 1923 is void and null for like reasons.

[fol. 2643] The Referee: Each of you, of course, refer to Acts of the General Assembly of the State of Missouri under date of 1915 and 1923?

Mr. Hogsett: Yes, Your Honor.

Mr. Folonie: Yes.

The Referee: Objection overruled.

Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there duly excepted and still except.)

Mr. Barker: You want the question now, Mr. McGee?

(Question read by the reporter.)

Mr. Leahy: That don't mean you made a final ruling on that subject?

The Referee: None of my rulings are final.

(Question again read by the reporter.)

A. I believe you have one item wrong there. Losses and investments—in reading the question there he read "loss investments," and that should be "losses on investment," I think.

Mr. Barker: Yes, if he can't answer the question any other way. I don't know much what the question means—I just asked it.

A. Interest and rent earned during the five year period from '17 to '21 by the companies doing business in Missouri was $197,557,766. Investment profit, $71,291,356, making [fol. 2644] the total income from investments of $268,849,122. Their losses on investments were $116,477,806. Investment expense was $14,117,694. Total investment, losses and expenses, $130,595,600, leaving a net investment profit of $138,253,522.

Q. Now, Mr. McGee, have you had occasion to apportion that net investment gain or profit which you have just reported to Missouri on the same basis that the companies apportioned the expense to Missouri in this lawsuit?

A. Yes, sir.

Q. What result does that show?

Mr. Folonie: We object, if the court please, to receiving an answer to that question, upon the ground, if the court please, that the allocation of any part of the supposed profits of the companies from investment is improper and deprives the plaintiffs of their constitutional rights, adopting herein the objection which I made in detail a few moments ago and which Mr. Hogsett and I joined in, in calling the court's attention to the constitutional guarantees; and in addition, we object to receiving evidence upon this method of prorating upon the ground that the proportion of the premium received has no just relation to the investments or the investment earnings in various localities, nor does the proportion of premiums received in Missouri bear any relation—nor does a proportion of premiums in Missouri as related to the premiums of the companies throughout the United States bear any just or proper relation to any supposed proportion of income from investments, non constat the companies might do a large insurance business in the State of Missouri at a loss, or they might do a small [fol. 2645] amount at a profit, their investments being a distinct activity may be all centered in New York and their underwriting be largely in Missouri, or vice versa, and there is no just relation between those proportions which premiums bear to premiums and which supposed ratable part of investment profit existent in one locality compared with the nation as a whole. We object further upon the ground that the same is destructive of the State of Missouri as an independent and separate rating unit in that if the profits from investment, if for example, it be assumed that a stable amount over a period of years should fluctuate in the proportions assigned to a state by its relative amount of premium compared to the premium in the rest of the company, then this profit or this loss would be dependent upon the amount of premiums written elsewhere and not in any wise upon the proper or improper character of investment. On these grounds we object to receiving the answer. We call attention particularly to the explanation made by the witness Gurth upon his testimony in the City of New York as to the impracticability of such apportioning investment earnings, and adopt the explanation by him made as part of our objection.

The Referee: Mr. McGee, the figure of one hundred million plus which you gave as representing the gain of the companies in a given period on investments represented, as I understand, the gains throughout the entire United States?

A. It shows an investment profit apportioned to Missouri of $4,216,072.

[fol. 2646] Mr. Barker:

Q. Now, how did you reach that profit apportioned to Missouri?

A. In this particular tabulation it is apportioned year by year. In 1917 the Missouri business was 2.66 per cent of the whole. In 1917 the companies had an investment loss of something over $3,000,000, which gave us for that year an investment loss for Missouri of $95,994. The other four years show profits. In 1918 the Missouri business was 2.64 of the total business; giving us as the investment profit apportioned to Missouri that year, $754,713. In 1919, the Missouri business was 2.75 per cent of the total business, which gives apportioned to Missouri for that year $482,804. In 1920, the Missouri business was 3.05 per cent of the total, giving us for that year $628,543. In '21 the Missouri business was 3.25 of the total business, giving us that year $2,446,006, a total of $4,216,072 for the five years.

Q. Apportioned to Missouri?

A. Yes, sir.

Mr. Folonie: I got off at the 1917.

A. The 1917, Mr. Folonie, showed a loss.

Mr. Folonie:

Q. The Missouri part of the loss as you figured it?

A. The Missouri loss was $95,994.

Mr. Barker:

Q. I intended to ask you, Mr. McGee, how you reached that result. How did you apportion that to Missouri and on what basis?

A. I thought I had explained that a bit ago.

Mr. Hogsett: He did just explain it.

The Witness: The proportion which the Missouri net premiums bear to the total net premiums in the United States.

[fol. 2647] Mr. Barker: Are you familiar with the method of the companies in apportioning their expenses to Missouri?

A. Yes, sir.

Q. Did you use the same method they used?

A. Just the same.

The Referee: Do you mean that in your apportionment of mean investment gains to Missouri you used the same method of calculation used by the companies in proportioning expenses?

A. Yes, sir.

The Referee: To the State of Missouri?

A. Just the same.

The Referee. Apportioning underwriting expense.

Mr. Barker:

Q. Mr. McGee, have you the capital and surplus of the fire insurance compaines throughout the United States from the years 1917 to 1921, inclusive?

A. Yes, sir.

The Referee: Pardon me a moment. Does this record show—I am not clear in my recollection—the length of time within which the various plaintiffs' companies have done business in the State of Missouri, or those of them whose testimony has been taken?

Mr. Folonie: Company by company shows how long they were here, yes.

The Referee: That is what I thought. Proceed.

Mr. Barker:

Q. Please give me the capital and the contributed surplus and the earned surplus and the total capital and surplus of all companies doing business in Missouri in this five-year period.

[fol. 2648] Mr. Folonie: Objected to as immaterial and incompetent and if the question be designed to lead to any

consideration of earnings from surplus or from capital or investments, further object upon the constitutioned grounds already called to the court's attention.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there duly excepted, and still except.)

Mr. Barker: Read the question.

(Question read by the reporter.)

A. You want that year by year now, or the total of the five years?

Q. Total will do, and Mr. Folonie can ask you if he cares to, on cross examination.

A. The total capital of the five years was $615,530,015.

Q. Explain how you arrived at that for the five year period?

A. Well, it is tabulated year by year.

Q. And that makes the average?

A. The capital increase from $107,000,000 plus in '17 to a little over $143,000,000 in 1921.

Mr. Folonie: May I ask a question so I will understand? The company which had a given capital in 1917 and the same capital during each of the five years, have you added that capital together five times?

A. Yes, sir.

The Referee: And then divided the result by five?

A. I haven't divided it because the calculation is easier made by using the total—and give the same result.

[fol. 2649] The Referee: I am not clear just how you did that, Mr. McGee. The total capital of all of the companies for each of the five years of the period under investigation?

A. Yes, sir. That gives the total capital employed in the business for the period of five years. In other words, it throws it for the purpose of calculation on a single basis, as though we were figuring one year with a capital of $615,000,000 and the other is on a one year—which is a matter of saving figures, that is all

Mr. Folonie:

Q. The company with one million of capital that was in the state five years, its capital in your figures would be five million, then, is that it?

A. Yes, sir.

Mr. Barker:

Q. Now, if you have finished that capital, give me the surplus. What was the surplus of all companies doing business in Missouri at the beginning of the period January 1st, 1917?

Mr. Folonie: My objection is continued to this line, if the court please, without reiteration?

The Referee: Yes; and the same ruling.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there duly excepted, and still except.)

A. Surplus in 1917, $200,481,922.

Mr. Barker:

Q. What was the surplus at the end of the period December 31, 1921, for the companies doing business in Missouri?

A. $299,718,129.

[fol. 2650] Q. How much of an increase was there in the surplus of the companies doing business in Missouri from the beginning of this period to the end of the period?

A. Ninety-nine million.

Q. Just approximately?

A. A little over ninety-nine million.

Q. What was the increase of the capital of these companies doing business in Missouri in this five-year period from the beginning of the period to the end of the period?

A. Approximately thirty-five million.

Q. What do you call contributed surplus?

A. Surplus paid in by the stockholders of the company.

Q. What is earned surplus?

A. Surplus derived from the business. I would say their undivided profits.

Q. Have you figured the contributed surplus of these companies from the beginning to the end of this period?

A. Yes, sir.

Q. How much was contributed surplus?

A. $14,155,523.

Q. How much was earned surplus for the same period?

A. $1,258,329,906.

Q. What was the total capital and surplus of all companies doing business in Missouri at the beginning of this period and at the end of the period, giving me the beginning first and the ending next—if you have it.

A. At the beginning of the period 1917 was $307,716,702.

Q. Now, what was it at the end of the period?

A. $442,848,209.

Q. Have you made a calculation——

[fol. 2651] Mr. Hogsett (interrupting): Where is that billion dollar item?

A. That was the total of the five years just as I explained about the capital a moment ago.

Mr. Hogsett: You are multiplying it five times—is this last item a multiplied item?

A. No, sir. That is the total capital and surplus for each of those years separately.

Mr. Hogsett: Q. Part of these answers are on a basis multiplied five times and this last figure is not on that basis.

A. He asked me for the capital and surplus at the beginning of the period and at the end of the period.

Mr. Hogsett: Q. But it is a fact that part of the figures you have given have been multiplied five times and the other part is only given as of a given date?

A. When I am giving the total, when the word total is used, it means the total capital and surplus used during each of the five years is added together.

Mr. Hogsett: Yes.

Mr. Barker:

Q. Have you calculated the distributed dividends to the stockholders from all companies doing business in Missouri for this five-year period?

A. Yes, sir.

Q. What dividends were distributed to the stockholders during that period?

Mr. Folonie: We object, if the court please, upon the constitutional grounds already called to the court's attention and in addition that any distribution of dividends from earnings outside of the State of Missouri where business [fol. 2652] was done at a loss is improper to be considered in ascertaining Missouri experience.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there duly excepted and still except.)

A. The dividends paid by those companies during the five years was $110,142,849.

Mr. Barker:

Q. Or what percentage of capital employed in the business during that length of time?

A. 17.89 per cent per annum.

Mr. Folonie: Same objection to this entire line of inquiry.

The Referee: Same ruling.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there duly excepted, and still except.)

Mr. Barker:

Q. So that during this same period under consideration the companies returned to their stockholders nearly eighteen per cent?

A. Yes, sir.

Q. During the same period, in addition to the amount returned to their stockholders, what, if anything, was added to surplus from the earnings of the companies?

A. Deducting the contributed surplus we find that there was a net increase in surplus of $85,080,684.

Q. And that was paid in in addition to the dividends distributed to the stockholders?

A. That was added to the surplus or undistributed profits.

[fol. 2653] Q. Take the invested funds of these companies for five years, calling attention to the real estate and collateral loans, amount of stocks and bonds, and the total of investment funds, have you had occasion to examine that?

A. Yes, sir.
Q. What did you find?

Mr. Folonie: Same objection.
The Referee: Let me understand just what is asked there, please. Does that question contemplate the use of the invested capital or the invested surplus?
Mr. Barker: He will explain that, I think, and differentiate between them.
The Referee: Very good. Proceed.

(To which ruling and action of the referee, the plaintiffs, by counsel, then and there duly excepted, and still except.)

The Witness: This is the total of the invested funds of the companies of all kinds.
The Referee: I see.
The Witness: Just how do you want that, year by year or totals?

Mr. Barker:

Q. Give me the totals, and then if we want it, year by year we may ask for it.
A. The total real estate and collateral loans for the five-year period were $223,610,942.
Q. Now, just what does that mean, Mr. McGee?
A. That means loans that are secured by mortgages on real estate or by the deposit of collateral with the company. [fol. 2654] Q. All right. Go ahead.
A. Stocks and bonds——

Mr. Folonie: Same objection to this entire line, if the Court please.
The Referee: Same ruling.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there duly excepted, and still except.)

The Witness: Total during the five years was $3,535,951,939.
Cash in banks on interest amounted to $397,298,882.

Mr. Barker:

Q. What was the total of all invested funds?
A. $4,156,861,763.

Q. What is the per cent of the total invested funds, if you have it?

A. What was that question?

(Question read by the reporter.)

A. Represented by what?

Q. As to loans of different kinds. If you haven't made a calculation, I don't care to go into it. If you have a percentage of the real estate investments, stock investments, money loaned to banks, etc. Have you made that calculation?

A. No, I haven't made any of the percentage which that is.

Q. Very well. Have you made a tabulation showing throughout the United States the net premiums, investment profit, the total income of underwriting profit and the other activities of all the companies?

A. Yes, sir.

Q. Give me those totals, will you, for the five-year period?

A. The total premiums were $2,876,885,281.

[fol. 2655] Net investment profit was $138,253,522; making a total income of $3,015,138,803.

Losses paid were $1,354,618,445.

Expenses paid were $1,112,322,278; making total losses and expenses of $2,466,940,723.

Leaving an underwriting profit of $409,994,558; a total profit of $548,198,080.

The Referee:

Q. Mr. McGee, a few moments ago in giving the total for the five-year period of investments, might or might not that total include duplications of losses and investments?

A. I think not, Your Honor.

Mr. Barker: Let me ask one question.

The Witness: That is, if I understand just what you mean.

The Referee:

Q. I mean this: giving the five-year period, suppose a given company in the first year of that period loaned $100,000 and at the end of the year that loan was repaid and they loaned the same sum to a different borrower for a year and so continued throughout the entire five-year period;

would that $100,000 be counted once or five times—in your total?

A. In the total, of course, it would be counted five times. Still I don't believe that would be considered a duplication.

Mr. Hogsett: It would be a quinduplication, wouldn't it?

The Witness: That was throwing it into a total there to make a single period of it, for matters of calculation only. The calculation could be made for separate years just the same and the result totaled, which would take five calcula- [fol. 2656] tions and the result would be the same as the other with one calculation. That is the only thing in throwing together totals.

Mr. Barker:

Q. Aside from the question of whether there might or might not be duplications, the figures which you have given are the figures as reported by the companies themselves?

A. Yes, sir.

Q. And they haven't claimed any duplications in this lawsuit?

A. No, not that I have heard of.

Q. Mr. McGee, have you had occasion to investigate the report of the underwriting experience by classes filed with the Insurance Department?

A. Yes, sir.

Q. Tell me what about that.

A. Did you wish the premiums, losses and expenses of that?

Q. Yes.

A. They show—the reports of underwriting experience filed with the department by these companies shows for the five-year period total premiums of $77,897,768.

Losses paid, $42,221,659.

Expenses paid, $30,371,234.

Total losses and expenses paid, $72,592,893.

Q. Now, Mr. McGee, are you familiar with the commissions paid by these insurance companies in the City of St. Louis and other places in Missouri?

A. To a considerable extent, yes, sir.

The Referee: Recess for five minutes.

(Which was accordingly done.)

Mr. Barker:

Q. Withdraw the last question, Mr. Blume, and I will start over again.

[fol. 2657] Mr. McGee, what is regulated and non-regulated business in Missouri?

Mr. Folonie: If the purport of this question is to ask the witness to make divisions for purposes of his own, we have no objection. If it is an attempt to place any construction upon the statutes of the State of Missouri, we object as calling for a conclusion of law.

The Referee: The referee wouldn't know in advance. The objection is overruled.

(To which ruling and action of the referee, the plaintiffs, by counsel, then and there at the time duly excepted.)

Mr. Barker:

Q. Explain the difference between regulated and non-regulated business as you do in the insurance world.

A. The Missouri statute provides that the Superintendent of Insurance may regulate rates on fire, lightning and windstorm insurance, and tornado.

Mr. Folonie: Move to strike out so much of his answer as being a conclusion of law, and an improper one at that.

The Referee: Sustained. The court judicially notes what the statute provides.

Mr. Barker:

Q. Ignoring the statutes and everything else, do you know the difference between regulated and non-regulated business? It has been testified to by fifty witnesses in this lawsuit.

Mr. Folonie: Counsel's statement is very moderate.

The Witness: I understand it to mean the classes testified by the statutes, the superintendent may have super-[fol. 2658] vision of the rates and classes which are not specified that he may regulate rates on.

Mr. Folonie: Move that be stricken out.

Mr. Barker: I consent it be stricken out.

Q. Is regulated business as recognized in the insurance world that insurance business which is regulated by law?

A. Yes, sir.

Q. Is non-regulated business insurance business as recognized by the insurance world on business which is not regulated by law?

A. Yes, sir.

Q. Have you had occasion to examine the exhibits filed in this lawsuit with reference to seeing the reports of companies as to regulated and as to non-regulated business?

A. Yes, sir.

Mr. Folonie: Objected to as calling for a conclusion of the witness as to what are regulated by law and what are unregulated by law.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted, and still except.)

Mr. Barker:

Q. Have you made some tabulations as to that?

A. Yes, sir.

Q. What are the result of them?

A. The companies have reported total premiums of $83,502,181. The bulk of that business is specified as fire, lightning, windstorm, and another classification headed, "All other classes;" making $11,532,379 under the head of "All other classes," which is the non-regulated portion of the business.

[fol. 2659] Mr. Folonie: Move to strike out that portion of the answer, "Which is the non-regulated portion of the business" as a conclusion of law.

The Referee: Mr. McGee, what lines of insurance are referree to in your last answer?

A. Well, it covers a number of lines.

The Referee: Chiefly?

A. Mail and transportation—I wish I had an annual statement blank.

Mr. Barker:

Q. Cover inland marine?
A. Does not.
Q. Does it cover automobile collision?
A. Does not—wait a minute——
Q. Post office delivery?
A. No.
Q. Then explain the difference between regulated and non-regulated classes. It has been testified to several times.

Mr. Folonie: We still have a motion pending to strike out part of the answer.

The Referee: I think the whole matter may be gotten at if the witness will specify the class of insurance covered in the different headings which he refers to as regulated and non-regulated. The referee, of course, is assumed to know what the statute covers. If the witness specifies the lines of insurance that clears it up.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiff-, by counsel, then and there at the time duly excepted, and still except.)

[fol. 2660] A. In reporting the figures for this suit, the companies divide their business under headings of fire, hail, tornado, which I have classed as the regulated business. Then they make another classification, "All other classes," which covers the non-regulated business.

Mr. Barker:

Q. And what is that?
A. That is made up of a dozen lines, I suspect, or more.

The Referee: Q. When you speak of regulated business, you refer to what different classes?
A. To the fire, hail and tornado.
The Referee: Q. And when you speak of non-regulated business, you include all other classes under that heading?
A. Yes, sir.
The Referee: Proceed.

Mr. Barker:

Q. What was the total of the non-regulated business as reported in this lawsuit?

A. $11,532,379.

Q. Do the companies report the expense paid on that business and the losses of it?

A. They report the losses separated. Expenses are not separated as to that class of business.

Q. Then there is no way for the department to tell how much expense went in the acquisition or handling of that business?

A. Only by apportionment.

Q. Have you had occasion to apportion it?

A. Yes, sir.

Q. What result did you reach?

Mr. Folonie: Q. Apportioned it from what source, please?

A. I will explain in just a minute. The non-regulated business being $11,532,379 is 13.81 per cent of the total pre-[fol. 2661] miums of $83,502,181 and consequently to arrive at the expense chargeable against that non-regulated business I have taken 30.81 per cent of the total expense of $30,371,234 which gives me $4,571,611 as the expense on what I have termed the non-regulated business.

Mr. Folonie: I think you misspoke, Mr. McGee. I understood you to say 30.81. You meant 13?

The Witness: 13 is what I said. 13 is what it was.

Mr. Folonie: Yes, that is what you mean.

Mr. Barker:

Q. And the department claims there should be a deduction of the expense in handling non-regulated business?

A. I don't get the tenor of that question exactly, General.

Q. Well, what is there to this regulated and non-regulated business? What is the point of it?

A. Well, there is an excessive loss as compared with the other business, in the non-regulated business. The premiums on the—it makes considerable difference whether you consider that non-regulated business in arriving at the profit on the lines we are attempting to reduce rates on or not.

Q. Well, why?

A. Because, as I said, the loss on the non-regulated classes are much in excess of the others that tend to increase the loss ratio of the entire business when considered together.

Q. Is automobile collision a regulated class?

A. No, sir.

[fol. 2662] Q. Expense ratio higher on that than fire on ordinary dwelling houses?

A. The loss ratio is.

Q. The loss ratio higher?

A. Yes, sir.

Q. Are you familiar, Mr. McGee, with the general increase guaranteed these companies in January, 1920, by the Insurance department of Missouri?

A. Yes, sir.

Q. Have you had occasion to examine and find out how much of that increase was applied in 1920 and 1921, the last two years of this period?

A. Yes, sir.

Q. How much of it was applied?

Mr. Folonie: We object, if the court please, as incompetent and not within the issues here and as violative of the provisions of the statute contemplating the taking of the five year experience of the companies as it existed in fact as the measure of the loss or profit to be applied to the forthcoming period in contemplation.

The Referee: Read the question, Mr. Blume, please.

(Question read by the reporter.)

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted and still except.)

A. 21 per cent of it—of the increase guaranteed in 1920 was in effect in the year 1920. The amount in effect in the year 1920 had increased until in that year 28 per cent of it was effective.

Mr. Barker: '22 what?

[fol. 2663] A. In 1920, 21 per cent of the increase was effective. In the year 1921 the amount effective had increased to 28 per cent, effective during that year.

Q. Now, explain to the court how that becomes applied and how it becomes effective.

Mr. Folonie: Same objection to this entire line of inquiry.

The Referee: Same ruling.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there duly excepted, and still except.)

A. The increase in 1920 which has been spoken of before in this hearing as a 15 per cent increase, was a 15 per cent increase on classes which amount to 71 per cent of the total business in the state, and in arriving at the amount which was effective in 1921—that means the amount effective was 21 per cent of 15 per cent of 71 per cent of the total premiums for that year of $21,895,057, which would give us $489,683 of premiums of that year which were a result of the increase granted in January, 1920.

Mr. Barker:

Q. Mr. McGee, probably you didn't understand my question. Explain how it applies. When a policy is taken out in 1920, 1921——

A. (Interrupting): Oh, I get your question. That increase on these classes did not become effective at once; but was to become effective as the various risks were re-inspected by the companies or by the rating bureau, rather, and upon such re-inspection the new rate might be applied. That accounts for the amount—the small amount that was effec-[fol. 2664] tive in 1921—increase in '20 and increase in '21, and it has been increasing from year to year since that time as these risks were inspected.

The Reporter: Let me read you that question.

(Question read by the reporter.)

Mr. Barker:

Q. A policy written in 1920 for five years, how much of the increase, if applied at all, would be applied that year?

A. The entire increase would apply, if any applied.

Q. And the same in 1921?

A. Yes, sir.

Q. How long in the course of time do you estimate it would be before the entire increase granted in January, 1920, of 15 per cent would be fully applied?

A. At the rate they have been making inspections so far it would probably be about '25 or '26.

Mr. Folonie: Years?

A. No, 1925 or 6, before those inspections would be completed and the entire increase effective.

The Referee: Q. Whether or not the increase becomes effective would depend upon whether or not re-inspections had been made?

A. Yes, sir.

The Referee: Q. When the re-inspections were made, the increase become operative, and not until then?

A. Yes, sir. In other words, if the company, or the bureau, had desired to make that effective in a short period, they could have increased their force of inspectors and shortened the period of inspecting. If there were very great need of that increase to cover losses it might have been remedied in that way.

[fol. 2665] Mr. Folonie: Move that be stricken out as argumentative.

The Referee: Sustained.

(To which action and ruling of the referee, the defendant, by counsel, then and there at the time duly excepted, and still excepts.)

Mr. Barker:

Q. Mr. McGee, taking the total business in excess of $83,000,000 of these companies for the five-year period, have you had occasion to consider the effect of the increase made in 1920 as to future business?

A. Applying the rate increase granted in 1920 to the business as reported by the companies for that five years from 1917 to 1921, we would have a premium income for that period of $91,195,226.

Mr. Barker: Pardon me, instead of what, as reported?

A. Instead of $83,502,181.

Q. Go ahead.

A. Using the same paid losses and paid expenses, total $80,161,057 would leave a——

Mr. Folonie (interrupting): We object to giving the result of the same paid expenses and the same paid losses in addition to the grounds of objection previously urged that the expenses would necessarily be altered by any change in the premium.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted, and still except.)

Mr. Barker:

Q. Now, start again, Mr. McGee. Start again.

[fol. 2066] A. Using the same losses and same paid expenses as previously used, we have a total of losses and expenses paid of $80,161,067, leaving an underwriting profit of $11,034,169.

Q. Now, then, Mr. McGee, considering this ten per cent reduction ordered in this lawsuit and applying that to the figures which you have just stated, what profit or loss would that leave the companies?

Mr. Folonie: Same objection as urged to the last preceding question, and on the ground it is speculative and incompetent.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted, and still except.)

Mr. Barker: Read the question, Mr. Blume.

(Question read.)

A. The premiums reported were $83,502,181. Including the increase granted in 1920 we have a premium income of $91,165,226; a reduction of ten per cent on this premium

income would be $9,119,522, making a premium income after applying the ten per cent reduction of $82,075,704. Using again the same losses and expenses, totaling $80,161,057, leaves an underwriting profit of $1,914,647.

The Referee: That is on business done in the State of Missouri?

A. Yes, sir.

Mr. Folonie:

Q. On the theoretical business?

[fol. 2667] Mr. Barker: No, no theoretical business. It's actual.

The Referee: I understand it is based on the assumption implied in the question.

Mr. Barker: That is right.

Mr. Leahy: That the increase was retroactive.

Mr. Folonie: And that there was such an increase of 15 per cent in 1920.

Mr. Barker: Well, no question about that.

Mr. Folonie: Oh, yes, there is.

Mr. Barker: Q. Was there an increase of 15 per cent in 1920, Mr. McGee?

A. 15 per cent on 71 per cent of the business.

Mr. Barker: I thought you had testified to that.

Q. Now, then, the figures which you have given, were they on the regulated or all business?

A. They were on the total business reported by the companies for five years, including regulated and non-regulated.

Q. Including regulated and non-regulated?

A. Yes.

Q. Have you separated that on the regulated and non-regulated classes?

A. Yes, sir.

Q. Upon the same assumption, what consideration—of the consideration of the 15 per cent increase granted in January, 1920, give me the difference between the effect upon that on regulated and non-regulated business.

Mr. Folonie: We object to it as purely speculative and not related to the five-year period mentioned and provided in the suit.

[fol. 2668] The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time excepted, and still except.)

A. Taking the regulated business amounting to $71,969,802, applying the increase of 15 per cent which was granted in 1920, we would have a premium income of $78,729,354.

The losses on the regulated business—losses paid themselves—with $39,108,388, the paid expenses on regulated business $28,532,083, total of losses and expenses paid $67,640,411, leaving an underwriting profit of $11,088,943.

"Q. Now, considering the effect of the ten per cent reduction on that regulated business, what profit or loss would the companies still have in Missouri after the ten per cent became effective?"

A. The total premiums after——

Mr. Barker (interrupting): I don't care for those. Can you give me the totals to my question, on the regulated business which you have already stated your figures on? Now, considering this ten per cent reduction which has been ordered by Commissioner Hide what profit or loss would it leave on the regulated business considering the 15 per cent increase?

A. It would leave an underwriting profit of $3,216,008.

Q. What would it show, a profit or loss on the non-regulated business?

A. $1,914,640.

Q. Very well. We are through with that now. Mr. McGee, what per cent of premiums are collected by the in-

[fol. 2669] surance companies in the City of St. Louis?

A. 29.9 per cent.

Q. Are you familiar with the commissions paid in the City of St. Louis?

Mr. Folonie: Is that from any of the records in the case that you give that answer?

A. That is from records in the Insurance Department, Mr. Folonie.

Mr. Folonie: What records?

A. From a special report which the companies make to us of the premiums and losses in the City of St. Louis, Kansas City and St. Joseph and the balance of the state outside of those three cities.

Mr. Barker: Now read the question.

(Question read by the reporter.)

A. Yes, sir.

Q. Are you familiar with the commissions paid throughout the state?

A. Yes, sir.

Q. Do the commissions paid in St. Louis differ from those paid throughout the state?

A. They are higher in the City of St. Louis.

Q. Why?

Mr. Folonie: We object to that as immaterial, why.

Mr. Barker: Very well. Withdraw it. It has been proven that it is an excepted city and I will withdraw it.

Mr. Folonie: No argument about that.

Mr. Barker:

Q. What amount of premiums—what amount of commissions, rather, were paid in the City of St. Louis for this five year period?

A. In round numbers, twenty-five million.

[fol. 2670] Q. What excess commission was paid in St. Louis over that paid throughout the state?

Mr. Folonie: Object, on the ground that the witness has not been qualified and no proper predicate for the answer.

The Referee: Read the question, please, Mr. Blume.

(Question read by the reporter.)

Mr. Barker: He has testified he knew what was paid in both places.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted, and still except.)

A. The conservative figure of the amount overpaid in the City of St. Louis, that is what we term excess commissions would be ten per cent, which would be $2,496,715.

The Referee: Q. What do those figures represent, Mr. McGee?

A. That is the excess commission paid in the City of St. Louis above the regular scale of commissions paid in the balance of the state.

The Referee: Q. In other words, if the scale of commissions applicable to the remainder of the state had been in force in the City of St. Louis during the period in question, the amount of premiums paid in the City of St. Louis would have been reduced by the amount you have given?

A. No, the amount of commissions paid to agents.

[fol. 2671] The Referee: I mean the amount of commissions would have been reduced that much?

A. Yes, sir.

The Referee: All right. Proceed.

Mr. Barker:

Q. Now, have you reduced that excess commission paid in the City of St. Louis from the expense of the companies as reported in this lawsuit, if you did that, what would that make the expense of the companies as against what they reported

Mr. Folonie: Object to that as speculative, because the same is inconsistent with the theory of taking the expenses as they were in fact during the period of five years and would be just as futile as to figure on raising the commissions through the rest of the state to the St. Louis standard, neither of which is the situation in fact and we object to the speculation.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted, and still except.)

A. The expense reported by the companies was $33,103,-634; deducting the excess commissions paid in St. Louis of $2,496,750 would reduce that expense to $30,606,919.

Mr. Barker:

Q. Now, then, Mr. McGee, considering the excess commission paid in the City of St. Louis as you have testified, and deducting that as you did in your testimony, what effect does that have upon the underwriting activities of the companies in the state for the five years in question?

[fol. 2672] Mr. Folonie: Objected to as speculative and in contravention of the statutory standard.

The Referee: Overruled.

Mr. Folonie: Exception; I haven't taken any yet this afternoon—expressly.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted, and still except.)

A. The underwriting profit on a paid basis with expenses which included these commissions was $3,341,124. Excluding these excess commissions from the expense makes the underwriting profit $5,837,839.

Mr. Barker:

Q. Now, Mr. McGee, have you made a tabulation considering the figures as made by the companies in this suit, considering the effect of the 15 per cent increase granted in 1920—January? And considering and eliminating the excess commissions paid in St. Louis, of which you have testified, and on that basis can you show the underwriting experience of the companies in this state for that five-year period?

A. Yes, sir.

Q. Give me those results.

Mr. Folonie: We object to the assumption that such a result if produced would be any underwriting experience and object on the ground as speculative and contrary to the statutory standard for measurement of experience.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted, and still except.)

[fol. 2673] A. On the total business it would give an underwriting profit of $13,340,780.

Mr. Barker:

Q. Now, considering the ten per cent reduction ordered in this case and allowing that, what profit would it still show? For the insurance companies in Missouri for this five-year period?

Mr. Folonie: Same objection to this whole line of questions.

The Referee: The same ruling.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted, and still except.)

A. We would still have an underwriting profit of $5,367,845.

Mr. Barker:

Q. That is, when you deduct the ten per cent deduction ordered in this case?

A. Yes, sir.

Q. Now, Mr. McGee, have you had occasion to consider the total capital of all the insurance companies for this five-year period doing business in the State of Missouri?

A. Yes, sir.

Q. Have you had occasion to apportion to Missouri its proportion of that capital on the same theory and in the same way which the plaintiffs in this case have apportioned the expense to the State of Missouri?

A. Yes, sir.

Q. How much capital under that plan do you apportion to the State of Missouri for this five-year period?

Mr. Folonie: We object, if the court please, on the theory that an apportionment of capital is improper, goes counter to the fact that all of the capital and the surplus of all of [fol. 2674] these companies is responsible for all of the insurance in the State of Missouri; upon the ground that an

allocation of capital is unwarranted and improper; that the theory of allocation of capital or surplus or earnings contravenes and abridges the rights of the plaintiffs under the 14th Amendment of the Constitution of the United States, depriving them of their property without due process of law, denies them the equal protection of the laws and is violative for the same reasons of the provisions of the Constitution of the State of Missouri; upon the ground that the proposed method of allocation is illogical and is upon a premise and upon a basis having no support in logic or law, and on these grounds we object.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted, and still except.)

Mr. Barker: Read the question.

(Question read by the reporter.)

A. Before I answer that question, I want to say that there are three separate allocations here, because there are three sets of figures in which the premiums are different.

One is the premiums as reported in the reports of underwriting experience of classes, and another is the total premiums as reported by the companies in this suit. The other is on the basis of the regulated business, which, of course, would make different ratios for the allocation of capital. [fol. 2675] Now, the first one: Reports of underwriting experience by classes, the amount of capital allocated to Missouri was $16,615,866.

Under the second, the total written premiums from exhibits in this suit, the amount allocated is $17,816,887.

In the third one, in which only the regulated business is included, the amount allocated would be $15,388,250.

Mr. Barker:

Q. Now, Mr. McGee, considering for the moment only the figures as submitted in this case in this law suit in which you have given the apportionment of capital, will you tell me on the figures which they submit in this law suit, what per cent of earning or loss the companies made as against

their capital in the State of Missouri for this five-year period?

Mr. Folonie: Same objection as to the last preceding question.

The Referee: Same ruling.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted, and still excepts.)

A. 18.75 per cent.

Mr. Barker:

Q. You mean by that that accepting the figures of the companies as reported in this lawsuit and apportioning the capital as they apportioned the expenses in this lawsuit, and taking their underwriting earnings in this state, it shows that they earned as against their capital how much in Missouri?

A. 18.75 per cent.

[fol. 2676] Mr. Folonie: May the same objection be understood as applying to each repetition of the question?

The Referee: Precisely; and the same ruling.

(To which action and ruling of the master, the plaintiffs, by counsel, then and there at the time duly excepted, and still except.)

Mr. Barker:

Q. Now, give me the percentage of the earnings on the other two theories, stating which theory and what earning.

A. On the basis of the figures from reports of underwriting experience by classes they earned 31.93 per cent on their capital. On the regulated business alone they earned 28.13 per cent.

The Referee: You mean, of course, Mr. McGee, on the capital allocated to the State of Missouri by the method you have previously testified about?

A. Yes, sir. Which, of course, would put that earning in the same proportion as the other.

The Referee: Yes.

Mr. Barker:

Q. Now, Mr. McGee, from the reports or tabulations which have been filed by these companies in this lawsuit, have you been able to make a clear check on their expenses?

A. No, sir.

Q. Why not?

A. Not reported in such a way that you can't check them.

Q. Do they report their bureau expenses in this lawsuit in such a way that you can tell what was paid to each bureau?

A. No, sir.

Q. In that event, is there any way the State Department could check them up to see what was paid?

A. Not definitely, no, sir.

[fol. 2677] Q. What is that?

A. Not definitely, no, sir.

Q. In their taxes as reported in this lawsuit, how do they report them?

A. Federal taxes are reported in a single item, covering all Federal taxes. Other taxes and fees are divided under state, county and municipal taxes, Insurance Department fees, Fire Department, Fire Patrol, and "All other license and fees," I believe, is the division given in the annual statement blank.

Q. Is the separation of the Federal statement blank such that you can tell what they were paid for?

A. No, sir.

Q. Is the separation of all other taxes such that you can tell what they were paid for?

A. Not all of them, no.

Q. Can you tell what was paid for fire prevention?

A. No, sir.

Q. Expense of the insurance companies in legislation, is that reported in this lawsuit?

A. Not under that head.

Q. Is there any way you can tell what that is?

A. No, sir.

Q. From the expenses which they have filed, is there any way in which the State Department could check them at all?

A. No, sir.

Q. Are the salaries of the officers listed in such a way that an investigation might be made to see whether that

salary was actually paid, and if so whether it was a reasonable salary?

A. No, sir.

[fol. 2678] Q. Are the salaries of any of the officers of any of the companies in this lawsuit disclosed?

A. Not so far as I know.

Q. Take the question of losses as reported by the companies in this suit, is there any way the State Department can check them?

A. No, sir.

Q. Why not?

A. Just a matter of taking one set of figures against another and both made by the same man, and that doesn't amount to any check.

Q. Why couldn't the Department of Missouri send a man to all of these officers of these companies and check these expenses item by item?

A. Well, there are three reasons. The amount of time it would consume, the amount of expense entailed, the lack of competent men to do it in anything like a reasonable time.

Q. Assuming that there were substantially 160 companies, how long would it take the Department of Missouri to check up each item of expense of all these companies scattered throughout the United States?

A. I could hardly give an estimate on that.

Q. Could it be done in five years?

A. I doubt it.

Q. Take the report as made on field inspection, is there any way in which that could be checked up?

A. No.

Q. Why couldn't you check the question of losses?

A. Well, they are not separated in a way that they can be checked at all in any way that I have been able to figure out and, as I said a while ago, it is simply checking two sets of figures by the same accountant against each other, [fol. 2679] and that doesn't amount to much of anything in the way of a check.

Q. Then for the purpose of trying this lawsuit the State of Missouri is compelled to accept the totals as submitted by these companies?

A. No way out of it.

Q. And you have no idea as to whether those totals are wrong or correct?

A. I have a rather definite idea that they are not correct, but I can't prove it.

Q. Now, then, Mr. McGee, have you had occasion——

Mr. Hogsett (interrupting): If the court please we move to exclude the last answer as a pure conclusion.

Mr. Leahy: It shows the bias, however, of the witness.

Mr. Barker: We concede that the answer be stricken out, but I will ask it again and get it.

Q. Is there any way in which these figures could be checked, yes or no?

A. No.

Q. Now, then, Mr. McGee, have you had occasion in checking over the figures of the insurance companies as submitted in this five-year period to find out the amount reported for charities and war work?

A. Yes, sir.

Q. Give me the total reported in these figures as contributions by these insurance companies for charity and war work.

A. $1,074,388.50.

Q. What is that reported in these tabulations as?

A. It is reported under various heads, sometimes war work, sometimes Red Cross, sometimes Community Chest, [fol. 2680] sometimes Salvation Army, sometimes two or three of those items to one company.

Mr. Folonie:

Q. Not making that answer upon any figures submitted in this case, are you?

A. No, sir.

Mr. Barker:

Q. You get those figures from the——

A. (Interrupting.) From the annual statement of the companies.

Q. As filed with the Insurance Department at Jefferson City?

A. Yes, sir.

Q. And unwittingly left out of this lawsuit, I assume.

The Referee: Objection sustained.

Mr. Barker:

Q. Now, Mr. McGee, do these figures appear in this lawsuit anywhere in that way?

Mr. Leahy: He has answered that question, Your Honor.

The Witness: I couldn't tell definitely. They would come under the head—they appear in the annual statement under the head of miscellaneous expenditures. In the blank reporting expenses here and miscellaneous items, I have no way to tell just what may be included in it.

Mr. Barker:

Q. But when the Insurance Department considered the question of a reasonable fire insurance rate in Missouri from the sworn reports filed in its office it had those figures before it?

A. Yes, sir.

Q. Now, have you had occasion to examine from the same source to ascertain what money, if any, these companies in this lawsuit and during this period spent for entertainment?

A. Yes, sir.

[fol. 2681] Q. What do they report to the State of Missouri that they spent for entertainment?

Mr. Folonie: We object to it, if the court please, on the ground it has no tendency to answer any of the evidence of the complainant herein; whether it is in or out of these statements in his office does not have any bearing on this case at all.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted, and still except.)

A. They amounted to $124,880.

Mr. Barker:

Q. How are those entertainment expenses listed in the reports as filed and sworn to in your office?

Mr. Folonie: Same objection.
The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted, and still except.)

A. In most cases listed as "Entertainment." Some cases in "Luncheons and entertainment."

Mr. Barker:

Q. Have you had occasion to investigate what amount is reported for Federal taxes?

A. I have only the figures reported by the companies in this suit.

Q. What are the figures as reported by the companies in this suit as to Federal taxes paid?

A. I don't believe I have it. I thought it was in one of [fol. 2682] these summary sheets that I had. They reported Federal taxes paid of $628,186; reported under the head of "Premium taxes."

Q. Is that on the Missouri business as reported in this lawsuit?

A. Yes, sir.

Q. Now, the charity contributions and the entertainment fund which they report as having spent, was Missouri's report of that allocated to it as an expense?

A. I suppose that it was. As I said a while ago, it was impossible to tell what is included in their apportionment of expense under the head of miscellaneous.

Q. In other words, the reports are such that you don't know what miscellaneous means?

A. I don't know what it covers in their report there. Miscellaneous covers a multitude of things.

Mr. Barker: I think that is all.

Cross-examination by Mr. Folonie:

Q. Mr. McGee, did you prepare or assist in preparing the tabulations of experience of the companies for the five-year period in question?

A. Yes, sir.

Q. At and just before the time of the entry of the rate-reduction order here in suit?

A. Just at that time I don't think I did, Mr. Folonie. I made the regular tabulations when the reports came in. I don't recall making any special tabulations at the time.

Q. Did you furnish the figures which were used by the Commissioner of Insurance in formulating his rate order from the records in your office?

A. No, sir.

Q. Were you familiar with the figures used by him in his rate-order and recited therein as the experience of the [fol. 2683] companies for the five-year period in question?

A. I don't recall that I ever went over the figures that were used at that time.

Q. Do you know that those figures purported to have been created by the office of which—with which you were connected from the so-called underwriting experience blanks in your office?

A. I assume that they were.

Q. I call your attention that the recital in the rate-reduction order that premiums for the period of five years in question were $81,067,318, as compared with the figures of calculation as you have here given them from those same blanks of $77,897,768, and ask you whether you can explain the wide discrepancy between the figures so recited in the order and those recited by you here.

Mr. Barker: We object to that. He stated he knows nothing about the figures prepared by any one else and he couldn't answer it, of course.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted, and still except.)

A. I cannot.

Mr. Folonie:

Q. I call your attention to the recital in the rate-reduction order that the paid losses during the five-year period in question were $45,066,124, whereas you have recited that your computation from the underwriting blanks for the period were $42,221,659—are you able to state how that [fol. 2684] discrepancy of $3,000,000 came to exist?

A. I cannot.

Q. I call to your attention the fact that in that rate-reduction order the expenses for the five-year period in question were recited to have been $32,534,617, as compared with your figures here given, computed from the underwriting blanks of $30,371,234 and ask whether you can explain that discrepancy between those figures?

A. I cannot.

Mr. Barker: Wait a minute. Don't answer when I make an objection. The figures which Mr. McGee testified to he stated clearly were the ones furnished by the companies in this lawsuit. Now he wants to ask him to explain why are Mr. Folonie's figures different from the figures of the Department.

Mr. Folonie: Not at all. I am asking for why the figures which he now purports to give as computed from underwriting experience blanks are so materially different from the computations made from those same blanks by his superior, Ben Hide, and recited in his rate-reduction order.

Mr. Barker: He couldn't know anything about that.

Mr. Folonie: Maybe he does.

Mr. Barker: He has testified only as to the figures in this lawsuit. He hasn't testified as to the totals from the others at all.

Mr. Hogsett: Oh, I beg your pardon.

Mr. Folonie: The witness has answered, if the court please.

[fol. 2685] Mr. Hogsett: He has said he didn't know. No living man could tell why your figures are different.

Mr. Folonie: Not my figures at all. I am talking about the two figures that came out of his very department.

Mr. Barker: He has said he didn't know anything about that.

The Referee: The objection is overruled.

(To which action and ruling of the referee, the plaintiffs by counsel, then and there at the time duly excepted, and still except.)

Mr. Folonie:

Q. Mr. McGee, you testified as to certain unearned premium figures which upon your method of calculating come to somewhat variant figures as to companies you recited. Did you check those unearned premium figures respecting all of the figures contained in the plaintiff's exhibit here reciting the unearned premium company by company for the five years?

A. It was done at my direction. I didn't do it personally.

Q. Well, when I ask the question in that form, I mean by you or under your direction.

A. Yes, sir.

Q. Have you recited all the discrepancies which you found or which were found under your direction respecting unearned premium figures of companies as was produced in evidence?

A. No, sir.

Q. Will you state any other figures which you found to be incorrect as to unearned premiums besides those you have recited?

A. I couldn't unless I had those sheets with me, Mr. Folonie. I picked out, I don't know how many there was of them, some 20 or 25, I think, where the differences were [fol. 2686] considerable, to call your attention to them. I would say that these differences show I think I would be safe in saying fully sixty per cent.

Q. Now, you pick out the ones where the discrepancy was of the more material kind.

A. Where it seemed to me it would likely change the result. I haven't attempted to say what change it might make in it.

Q. Have you made any calculation at all to ascertain—I know that some of these are figures on your figures and some our figures—have you made any calculation as to the net result of application of your changes to the figures?

A. No, I haven't—I didn't have time to make any tabulation of that and get it together.

Q. Is it not a fact that all of the figures that you have recited here as variations in figures on the unearned premiums as here recited by you in your testimony when applied to the figures already in evidence would not make a difference of one per cent in the total result?

A. Not having tried it out I couldn't say what the result would be.

Q. Have you made any comparative calculation of any kind of your figures with those here presented in evidence as to the effect of those changes or variations?

A. Of one company only, and that was the one that we had an argument over yesterday, the Dubuque Fire and Marine. The difference in the premiums there did run over and calculate their earned premiums to see what difference it would make had the premiums that they paid taxes on been used, and that I think is the only company that——

[fol. 2687] Q. That was the only company in which you found the written premiums as reported in their figures here to be variant from those filed in the tax statements with the state?

A. Yes.

Q. Did you find the written premiums of any other company except the Dubuque Fire and Marine in this entire let of 160 companies more or less, wherein the written premiums as reported in the exhibit here on file varied from the figures shown in the tax statements filed with your office?

A. Just one other.

Q. One other company besides the Dubuque?

A. The Michigan Fire and Marine.

Q. The Michigan Fire and Marine, you know that they are out of business, do you not?

A. No, I don't know that.

Q. They retired from this state, have they not?

A. I don't know. I have paid no attention to which ones got in or out for some time now.

Q. You recognize the fact that error might occur with every effort to get them correct in the case of a company that had ceased doing business, do you not?

A. No doubt of it.

Q. Now, with the exception of those two companies then, you found the premium figures as distinguished from the

calculations made from the premium figures to be in accordance with the tax statement as filed with your department?

A. Those were the only discrepancies of that sort that I recall now.

Q. And the remaining discrepancies to which you called attention so far as affects premium figures are concerned, [fol. 2688] were in the calculation or application of ratios to arrive at the unearned premium?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. How do you account for the discrepancy between the underwriting experience report of premiums and the written premium figures as shown in the tax statements and as shown by the exhibits here in evidence, appearing in both that the written premium figure gross, or the entire written premium figure is considerably in excess of the whole premium shown in the underwriting blanks?

A. The underwriting report as you know for three or four years of that five-year period, I am not sure which, was supposed to be made on a different basis from the tax schedule.

Q. Different basis in what particular?

A. It was supposed to be made on a basis of net direct premiums—which differs from the tax schedule.

Q. And the tax schedule is upon what basis?

A. Net premiums—by that we mean the gross premiums less reinsurance in authorized companies and less returned premiums on cancelled policies.

Q. The effect of that different requirement of the blanks furnished by your office for filing by the companies was productive intentionally of a lesser premium figure in the underwriting blanks than in the tax statements and in the annual statements, isn't that correct?

A. I object to that word "intentional."

Q. I mean, it was your intention to secure a figure on a different basis which would be a smaller total figure.

A. It would not; absolutely. The only idea in putting [fol. 2689] the net direct premium figure instead of the other was that I after consultation with Mr. Hess, who was at that time in charge of the Missouri Rating Bureau, that it was the figure which was easier furnished by the com-

panies and would probably be more accurate and would if properly reported in both instances be the same total result.

Q. Well, the total results in the two types of statement filed with you were in fact different?

A. They in fact are different, yes, sir.

Q. Have you ever attempted a reconciliation of those to ascertain why those figures are different?

A. I don't know any way that a reconciliation could be made, Mr. Folonie. I have gone this far on it: I have used up reams of paper and correspondence to try to get the companies to explain what seemed to me discrepancies, but I never got it reconciled.

Q. What was the basis on which your annual statements were required to be returned in the year 1917?

A. 1917 our blank required the same bases as in the tax schedule—gross premiums less reinsurance in authorized companies and less return premiums on canceled policies.

Q. And what was the basis of your underwriting statement requirement in 1918?

A. I am not sure whether the change was made in 1918 or 1919.

Q. Well, whenever the change came what did it require when the change came?

A. It required a direct net—net direct premiums; that is, the direct premiums written less return premiums only. [fol. 2690] Q. In other words, when the change came, whether in 1918 or 1919, reinsurance was eliminated from consideration entirely in the return if properly made?

A. Yes, sir.

Q. According to the requirements of the blank?

A. Yes, sir.

Q. But in 1917, reinsurance within the limits you have mentioned was properly to be taken into consideration?

A. Yes.

Q. The effect of having the change in the requirement if followed by the companies would be productive of two groups of figures which would not correspond as to the character or nature of premium derived, is that correct?

A. No, sir, it is not correct.

Q. Is there any difference between taking into account the reinsurance and leaving it out of consideration? Does it make any difference in the figures?

A. As long as you confine yourself to the authorized companies it does not.

Q. Did you have any reinsurance companies authorized to do business in the State of Missouri confining their business to reinsurance?

A. I don't recall whether there was during that five year period or not. We have in the last two or three years had one or two reinsurance companies.

Q. In the year 1917 was not the Rossia Company authorized to do business in this state?

A. Never was authorized to do business in this state.

Q. Are you prepared to say now that there were or were not strictly reinsurance companies doing business in this [fol. 2691] state in the year 1917?

A. I would not be positive, Mr. Folonie, but I think not.

Q. Now, in the year 1917 did your blank call for all the classes of business which the companies did or only for some of them?

A. I don't remember.

Q. Is it not a fact that in the blanks—underwriting blanks for some of the years during that five-year period in question that marine insurances were excluded from the requirements of the report?

A. Yes.

Q. And is it not true that in some of the years marine insurance was required to be reported?

A. I hardly think so, Mr. Folonie.

Q. Is it not a fact that in some of the years during that five-year period the automobile business was required to be reported and in others of those years not required to be reported?

A. My impression is that the automobile business ran through the whole five years. I am not positive as to that, though, Mr. Folonie.

The Referee: We will take a five minute recess here, gentlemen.

(Which was accordingly done.)

Mr. Folonie:

Q. I show you a 1920 underwriting experience by classes blank of the State of Missouri and directing your attention to item number 82 on that, indicates that in that year automobile premiums of all classes were directed to be included, were they not?

A. Yes, sir.

Q. Now, is there any place in that blank requiring or directing marine premiums to be reported? That is, the 1920 blank?

A. Not unless it comes under some of those classifica-[fol. 2692] tions, Mr. Folonie. I am not familiar with what they include.

Q. Now, you will note that under, "Miscellaneous" as that item appears there, there are specified numbers referring to specified classes, are there not?

A. Yes, a number of them.

Q. Now, I shall ask you to assume, if you don't know, that those refer to different fire classes, and I will ask you whether if you were filling out that particular blank for the State of Missouri and had marine business where you would enter it on that blank?

A. I don't think I would enter it on that blank. As I said, it was included in some of those other classes.

Q. Well, do you find any class there which is inclusive of marine?

A. I don't know. I don't know anything about the classification of the risks in the world.

Q. Now, I will now show you the blank for the year 1918 and ask you whether there is any place in the blank for the return of automobile premiums.

A. Doesn't seem to be.

Q. Now, referring back to the blank for 1917, I call your attention to item 31, where the words "Motor vehicles" appear—I am correct, am I not, in the statement that motor vehicle insurance was in 1917 required by the blank?

A. Yes, sir.

Q. In the following year of 1918 you have stated that it is not required.

A. Doesn't seem to be in that blank.

Q. Now, don't you think that in fairness, Mr. McGee, that at least a part of the discrepancy between the total

[fol. 2693] written premium figure as appearing in the evidence here and in the annual statements and in the tax statements, all of which are greater than those appearing in the underwriting blanks, with the omission of some of these classes during some of these years may account for that in part?

A. Yes, sir, I should think it would account for at least a part of it.

Q. Now, in the 1917 blank, it is stated in the instructions here, "This report must be made on net premiums and net losses paid. By net premiums and losses is meant premiums and losses less return premiums and reinsurance in companies authorized to do business in Missouri and no other deduction should be made." Now, I will ask you whether in preparing an expense statement upon that basis, whether a reasonable construction of that blank in your judgment would not indicate that the saving in expense or reduction of expense by receipt of commissions from companies to whom reinsurance was ceded would affect the expense item of such companies as did cede reinsurance to others?

A. Reduce their average commission, yes.

Q. And would result in showing a lesser expense of that particular company which so did as compared with the basis of later years when that reinsurance was eliminated from consideration?

A. I fail to see it.

Q. Well, if a company——

A. (Interrupting.) Wait a minute. They placed reinsurance——

Q. (Interrupting.) I am assuming the company cedes and does not assume reinsurance, in presenting this hypothesis to you.

[fol. 2694] A. If it cedes reinsurance, it receives a commission, and that goes into account to reduce the average commission paid just the same as the other.

Q. Would it make any difference whether the companies cessions were of high commission or low commission business?

A. Just what do you mean by that? Whether they receive a high commission for what they cede or whether low commission?

Q. No, I mean if their cession of business was of that class of business on which the commission upon its direct acquirement were high, commonly known as a high commission business, and another company in its cessions ceded a low commission direct business, would not the fact of the character of business ceded affect the net expense of the ceding company in total?

A. Possibly so; to some extent.

Q. Now, don't you think that a variation would necessarily result to some degree if experience of the companies were all placed upon a uniform basis as distinguished from some reporting —or from reporting in 1917 upon one basis and in a subsequent year upon another basis and seeking to add those together?

A. I don't think so.

The Referee: What is the answer?

(Answer read by the reporter.)

Mr. Folonie:

Q. Now, in the case of —is it not a fact that in some of the period of years here in controversy, some of the companies in the suit ceded a very large proportion of their business as compared with others?

A. Yes, sir.

[fol. 2695] Q. And is it your viewpoint that the ratio or percentage of expense of those two companies, one ceding a great part of its business, and the other retaining virtually all of its direct business, would be unaffected so far as the ratio of expense of those respective companies to premiums was concerned?

A. No, it would be considerably affected and if I gave you the impression I did not think so, it was erroneous.

Q. Yes. Well, I thought perhaps we were not understanding each other thoroughly. Now, in what way would the expense ratio be affected as between two such distinguished companies?

A. Well, take a company that ceded very little reinsurance, naturally they would receive a small commission as compared with the one who ceded a considerable portion of the insurance. Their average commission in that case would not be reduced as much by commissions received on reinsurance as would the company ceding the larger amount,

and consequently the average commission of the company ceding the larger amount of reinsurance, that is, the net commissions I am speaking of, would be less than in the other case; which would necessarily affect the ratio as compared to the premium income, more or less.

Q. Do you know as a matter of practical knowledge in your business that in companies which are interrelated in their control, such as the Franklin and the Home, for example, that the rates of commission upon reinsurance vary quite materially from such interrelated companies as compared with those companies which are not contained in such [fol. 2686] groups?

A. I don't know that; no, sir.

Q. Haven't you in examining the reports of these various companies, found a difference in the expense cost as between companies we will say the smaller companies associated with larger companies in their expense cost as related with companies of about the same size who were not so connected with a larger company?

A. No, I don't know that I have noticed that difference, Mr. Folonie.

Q. Do you know whether that is a fact or not, or do you mean to say you don't know?

A. No, I don't know that it is a fact.

Q. You don't know that it is not a fact?

A. No.

The Referee: What is the answer to the last question?

(Question and answer read by the reporter.)

Mr. Folonie:

Q. Now, I note that in your giving the unearned premium variations where you said they existed in a group of companies, that in no case did you give the unearned premium as of December 31, 1916. I am correct, am I not?

A. I don't believe I did.

Q. Now, you recognize, do you not, Mr. McGee, that in ascertaining the earned premium figure under the method which is used by the companies and for which I have insisted here that the unearned premium as of the date before the period to be computed is a material factor in making your calculation?

A. Yes.

Q. From the figures of variations which you state exist which you have given here, it is not possible to make any [fol. 2697] calculation of the earned premium of those particular companies, is it?

A. Not with the figures I gave here in my testimony, no.

Q. It would require to calculate the earned premium of each of those companies the unearned premium as of December 31, 1916, in addition, would it not?

A. Yes. Just a moment there in explanation. I had those reserves as of December 31, 1916, noted on those sheets, but I didn't call them.

Q. You didn't bring those sheets with you though?

A. Yes, the sheets that I had here yesterday. I say I had that '16 reserve noted there but I didn't call it. If you will remember that in the case of one company, I don't remember which, I called your attention to the fact that they didn't have any premium reserve for December 31, 1916.

Q. Yes. Well, I was not calling attention to that but the group in general you did not give the 1916 unearned.

A. I did not give it yesterday although I had made the check. The check was there just the same as for the other years—and the differences were about the same as far as that is concerned.

Mr. Folonie: I move to strike out the last statement as not responsive.

Mr. Barker: I think it was purely in answer to his question. He has a right to make any reasonable explanation so as not to have his answer misunderstood.

Mr. Folonie: It is an improper conclusion in that the figure given was about the same as the one not given.

The Referee: Sustained.

[fol. 2698] Mr. Folonie: I didn't ask him what his figure was.

(To which action and ruling of the referee, the defendant, by counsel, then and there at the time duly excepted, and still excepts.)

Mr. Folonie:

Q. Now, in a group of companies, American Central, Commercial Union, Connecticut Fire, Dubuque Fire and Marine, Firemen's Fund, Glens Falls, Globe & Rutgers,

Insurance Company of the State of Pennsylvania, Marquette Fire, Milwaukee Mechanics, Newark, Niagara, Phoenix Fire, St. Paul Fire & Marine, Security, North British and Mercantile, Sun Insurance Office, in that group which I am seeking to put into one group to see if I can shorten this—taking the North British Mercantile as exemplifying the situation, you stated as to the latter company respecting that item of inspections and surveys for the year 1917, the amount was $1,353 and you found an amount as shown by the Missouri Inspection Bureau records was $1,508. The following—and check this if you wish—the following year the amount as appearing in our tabulation was $2,949.16, whereas the Missouri Inspection Bureau figure was $1,700 and in 1919 it was $3,779.89 in our figures and you stated the Missouri Inspection Bureau payment of that company was $1,502; the following year, 1920, our figures $2,233, leaving off the odd cents, the payment to the Missouri Inspection Bureau $2,331, and in the year 1921 our figures $2,422, and the payment to the Missouri Inspection Bureau $1,884. Now, are the various items to which you so referred, those appearing upon line 8 of the expense statement of those respective companies?

A. Yes, sir.

[fol. 2629] Q. That is the item to which you make reference?

A. Yes, sir.

Q. Now, I will ask you whether after item 8, inspections and surveys, there does not appear in parenthesis the words, "Note No. 1"?

A. Yes, sir.

Q. And at the bottom of the sheet, is it not a fact that on every one of these expense sheets of each company appears the following: "Explanation, paid expenses not only. Item 8 should include Missouri Inspection Bureau, Missouri Audit Bureau, St. Joseph Fire Prevention Bureau, and similar expenses actually paid in Missouri"?

A. Yes, sir.

Q. Now, have you made any investigation or secured any information as to the amount paid by the group of companies recited, to the Missouri Audit Bureau?

A. I have not.

The Referee: You mean by that the same thing as the Missouri Inspection Bureau?

Mr. Folonie: No.

The Witness: No, different organization.

Mr. Folonie: It is—both are mentioned in the note, Missouri Inspection Bureau and Missouri Audit Bureau.

Q. Have you ever been at the office of the Missouri Inspection Bureau in St. Louis?

A. Yes, sir.

Q. Have you ever been in the office of the Missouri Audit Bureau?

A. I have not.

Q. Do you know as a fact that those offices are upon the same floor of the same building and immediately adjoining each other?

A. I know that they are in the same building; further than that I don't know.

[fol. 2700] Q. You haven't made any request upon that Audit Bureau for any information as to what they were paid by these respective companies for this period?

A. No, sir.

Q. You have secured no information on that subject?

A. No, sir.

Q. There were some examiners from your department who went in and did secure information from both the Inspection Bureau and the Audit Bureau, were there not since this suit was brought—in fact, within the last few months?

A. I think so; yes, sir.

Q. And they made a check, did they not, of things in those offices respecting certain selected companies, the Aetna and the American Central and several other companies?

A. I don't know what items they checked, Mr. Folonie.

Q. All you know is they did work there?

A. Yes; that is all I do know about it.

Q. Well, do you know that it was in connection with the facts of this hearing or bearing on that period?

A. I think it was.

Q. Has any of the information secured by those examiners from your department come to your personal attention?

A. No, sir.

Q. The only thing that has come to you is these figures from the Missouri Inspection Bureau that you have already mentioned?

A. That was all.

Q. The St. Joseph Fire Prevention Bureau, have you ever visited their place where they engage in business?

A. Never was in St. Joseph in my life?

[fol. 2701] Q. As its name implies, it is located at St. Joseph, Missouri, is it not?

A. Yes, sir.

Q. Do you know whether any persons from your department have investigated or sought any information from them respecting expenses of these companies?

A. Not so far as I know.

Q. At least, you haven't done it, or it has not been done under your direction?

A. No, sir.

Q. Have you made any effort yourself, by correspondence or request on any one, for the makeup of the items appearing under item 8—I mean any one connected with the insurance companies?

A. I have not, that is, in connection with this suit.

Q. Well, that is what I have in mind. I suppose in the routine of your office, in the years gone by, you asked for information from time to time from various companies?

A. Yes; and on this particular point, but not since this suit was started.

Q. Now, in the—directing your attention to another subject matter respecting which you testified, I note in the case of the American Alliance, for example, that in the year 1917 you mentioned the fact that the expense ratios for the State of Missouri as appearing by the figures of that company were $54.56, whereas their average expense ratio for the United States was $35.44; the figures I mention were 5456?

A. They were correct.

Q. For Missouri, and 3544 for the average for the United States, Mr. McGee?

A. That is correct.

Q. Now, I will ask you whether it is your theory that if that company had an actual expense ratio in the State of

[fol. 2702] Missouri upon the business in fact transacted during that year of 54.56 per cent and their average ratio for doing business throughout the entire United States was in fact 35.34 per cent, that it was improper to apply the ratio in fact existing upon Missouri expense, and that the average for the United States ought to be applied, irrespective of the fact that it was lower than the Missouri ratio in fact? Was that your point of contention?

A. Not altogether.

Q. Well, was it in part?

A. In part, yes.

Q. In other words, if the expense of the companies in the State of Missouri in fact upon their written premiums, the paid expenses in Missouri were approximately 44 per cent, and nation-wide, the expense of those companies, we will say, hypothetically, was 39 per cent during that same period, is it your viewpoint that in calculating their experience in this suit you should adopt the nation-wide experience as distinguished from the Missouri expense?

A. No, sir. Let me explain just a little what my attitude on that is, Mr. Folonie. There are several items there that might very reasonably and does very frequently alter the Missouri expense, either above or below the average expense. Some of these companies show an expense considerably above their average expense, which, I believe, is perfectly correct and legitimate. Some of them show an expense which is below their average expense, which I believe is equally correct. Some of them I do not believe are correct at all, and this is one of them.

[fol. 2703] Q. Now, I will ask you whether, if your theory of taking into account only authorized reinsurance, if the theory be adopted, that reinsurance in authorized companies only be considered, and there were in fact reinsurance in unauthorized companies for a large part of the business, which resulted in a considerable reduction of the expense ratio if considered—is it not a fact that a difference between the United States ratio might very reasonably exist by taking into account all reinsurance, whereas that portion reinsured in unauthorized companies would be eliminated from reinsurance consideration in the Missouri figures?

A. I can't see that that would have any effect on the apportionment of Missouri expenses because there is as much probability of a portion of the Missouri business being ceded to an unauthorized company as there is the business of any other state, and so far as it is entitled to credit for the commission received on it, just the same as if it had been reinsured in a company authorized to do business in the state, so far as expenses are concerned.

Q. In other words, if I understand you, you think a proper basis for computation in a case of this kind is to take into account the actual experience wherein companies take reinsurance whether in authorized or unauthorized companies, is that correct?

A. As a matter of computing expense, yes. If it affects the payments of the company either way.

Q. Well, you see, as to expense, of course it would be taken into account necessarily in calculation of premiums. Do you think it should be taken into account there, too?

[fol. 2704] A. I didn't select this basis of reporting premiums. It was your own choice.

Q. Well, I am trying to get your views as to what is proper and what is improper. Do you think that you could take one basis for expense and another basis for premiums and get at any logical result—or should the same basis be applied to both premiums and expense?

A. I don't see wherein it constitutes a different basis, Mr. Polonie.

Q. Well, when I say a different basis, I mean taking into account reinsurance, whether authorized or unauthorized in ascertainment of net premiums, whether in your judgment that is a proper or an improper method of calculation?

A. Any item that reduces the expense, reduces it on the entire business, no matter where it comes from. If commissions on reinsurance will reduce the general expense of the company, it should be taken into consideration in figuring the expense regardless of whether it comes from reinsurance in authorized companies or unauthorized and the matter—and it doesn't matter about your premiums at all, whether they have excluded any or all insurance. You ask me my opinion about the basis as to premiums. I think the correct way to report the premiums is net direct premiums. You asked me for that information.

Q. Well, now, I will try to see if I can get an answer to my question.

A. All right.

Q. You stated, in substance, that if reinsurance in unauthorized companies was productive of commissions which [fol. 2705] went in reduction of expense, it should be taken into account. Suppose that the reinsurance in unauthorized companies was productive of an increase of expenses, then should it be taken into account?

A. Certainly it should.

Q. Now, if during any period of the five years in question, there were no strictly reinsurance companies doing business in the State of Missouri, the result would be that the business which was ceded to such reinsuring companies would be taken out of the net premiums of direct writing companies in providing their national or United States figures but would not be taken out in reporting to the State of Missouri upon blanks requiring them to report on an authorized basis, isn't that correct?

A. I didn't catch that question. Will you repeat it, please?

Mr. Folonie: Read it to him, Mr. Blume.

(Question read by the reporter.)

A. Yes.

Mr. Folonie:

Q. Now, in the case of the American Alliance, you stated that the—in the year 1917 the sum of the apportioned expense was $7,768 and you applied a ratio to it in order to arrive at what you said was a correct apportioned expense. Where did you get that figure of $7,768?

A. Their Missouri premiums as reported here were $26,569.

Q. No, my question is, where did you get the item of apportioned expense of $7,768?

A. It was made up of home office salaries and expenses, [fol. 2706] $7,230, rent $50, postage and telephone exchange and express, $11.80, which is a total of the payments—hold on—adding printing and stationery, $475.00, which is the total of the items included under the heading of '17, pro-

portioned expense on your expense blank furnished to the companies. You have item 17 there including the same six or seven items of expense as they appear in the annual statement.

Q. Yes, but I am trying to find out the amount that appears opposite that item in that exhibit for the year 1917, is $520——

A. (Interrupting.) Yes, sir.

Q. Now, I am asking where you got this item of $7,768.

A. I am giving it to you. From the annual statement of the company; as I explained yesterday in my testimony.

Q. Well, I didn't understand your explanation as to your source of the figure. Now, if there were any overhead expense of that year—by the way, which item in the annual statement figure did you take that from—what page and place?

A. On page 3, disbursements—I believe it is page 3.

Q. Now, did you adopt the same method in the various companies and for the various years in reaching that figure of an amount apportioned, calling your attention to that part of your testimony as to the American Alliance—I am trying to put them into a group now to shorten the matter—where you said there was a sum of $7,768 for the year 1917, which was apportioned to Missouri, and which in our expense statement here in evidence put as apportioned amount of $520 and which upon your calculation should be $243—that sum to which you applied your ratio [fol. 2707] of 3.13 per cent to reach the conclusion of $243 was in each of these instances secured from the annual statement as you have indicated respecting this item of $7,768, was it—I mean, that was your source of securing the figure in each case?

A. Yes, sir.

Q. Now, I call your attention in the expense statement here offered in evidence, apportioned expense 1917—home office salary expense, rents, furniture and fixtures, maps, including corrections, inspections and surveys, including underwriters' boards and associations, but excluding such expenses as are charged against an individual state, postage, telegram, telegraph, telephone, exchange and express, legal expense as charged, in items 1 to 16, advertising print-

ing and stationery and then the note number 3, and thereunder appearing as follows: "Under item 17 D include such Bureau expenses as The Union, Western Insurance Bureau, National Board, Oil Association, Sprinklered Risk Association, covering operations in Missouri and which must be prorated. Do not include expenses covered in item 8 or Bureau or Association expense, such as Illinois Bureau, which are directly chargeable to any other individual state." Now, directing your attention to that, I will ask you whether it is not a fact that under that item appearing in the annual statement blank to which you had reference, expense such as the Union, Western Insurance Bureau, National Board, Oil Association, Sprinklered Risk Association, were in no wise included in or contained in the [fol. 2708] annual statement figure to which you had recourse in any case?

A. Why not?

Q. I am asking you whether it is not a fact they were not there?

A. They are not in this company because the annual statement does not show they paid a dollar to them.

Q. Now, isn't it a fact that such expense as Oil Association and Sprinklered Risk Association do not appear in the annual statement blanks of any of these companies under the item which you have called attention to?

A. I think they do. That is the only place in the annual statement that I know for that.

Q. Can you say that as to any of these companies that you testified that these items of expense of those companies appeared in the annual statement under that item? I am talking now about Oil Association and Sprinklered Risk Associations?

A. If they don't appear there, Mr. Folonie, I do not know where they appear. I know of no other heading under which they could appear.

Q. Well, do you recall that in any one of these companies you examined of any of these companies for any year where you detailed the expense, or such items appeared in any one of these for any of the years you examined?

A. Not specified, no.

Q. No. Now, I will ask you whether such an expense if included in the expense—apportioned expense appearing in these statements here produced in evidence are not proper expenses in your judgment to apportion.

A. Yes, sir.

[fol. 2709] Q. Have you an annual statement blank with you?

A. I have not. I wish I did have.

Q. Now, do you realize and appreciate, Mr. McGee, that average expenses of a company for the United States must be necessarily higher than the expenses paid in the same jurisdictions and lower than those paid in others, to be an average?

A. Exactly so. I made exactly that statement a little bit ago and we do not disagree.

Q. Now, do you understand, Mr. McGee, that in the item of agent's commissions, that in that commission, that in the commission items as contained in the expense statements here that the adjustments of compensation by way of commission paid or received upon reinsurance are included in thos agent's compensation figures? Are you appreciate of that?

A. I don't just get what you mean, there, Mr. McGee.

Q. Whether under item 2 of agent's commissions——

A. (Interrupting.) I understand which item you are referring to.

Q. Whether you were appreciate of the fact when you were testifying that in the method in which these have been prepared that if commissions were received or commissions paid upon reinsurance, that those items were cared for in that agent's compensation item?

A. No other place to care for them that I know of.

Q. There is no other place in the blank where it would logically go, is there?

A. No. My idea of the way that was handled is just this: that in agent's commission account, those commis-
[fol. 2710] sions are credited and charged back and forth as the reinsurance is ceded or assumed, and in that way, as I explained a while ago, affect the average commission of the company one way or the other.

Q. And therefore if a company wrote business, we will say at a given commission rate and reinsured virtually all of its business and received a customary commission, the result would be to make—to largely reimburse the amount they had paid agents for direct writing by receiving a corresponding commission more or less from the reinsured to whom they ceded it, isn't that so?

A. Yes, sir.

Q. So that a company which, we will say, had a 40 per cent cost for acquisition of its business and received 25 per cent by reinsuring that business in another company would show a relatively small commission expense or ratio?

A. Yes.

Q. And if instead of ceding reinsurance they assumed a large amount of business and paid commissions to secure the business it would make a corresponding increase in their grand ratio if they put it into their agent's commission item?

A. Yes. And that is undoubtedly true with many of these companies; probably will range from as low as five or six per cent up to 35 or 6.

Q. Yes, and some times when they take over another company's business it goes up 50, doesn't it?

A. I don't think I have noticed where it went to 50 except this one.

[fol. 2711] Q. Now, don't you know, as a matter of fact, that the American Alliance is under the same general management as some other company or companies in Missouri?

A. My understanding that it is under the same management as the Great American.

Q. Now, have you any knowledge of their method of allowance of commissions from one to the other on their Missouri business?

A. I have not.

Q. Now, if their method of doing business one with the other was such that one of them paid 70 per cent to another for business or on the contrary took the business it would make a change in the commission item of the two companies, would it not?

A. That is a pretty violent supposition—but it would work that way.

Q. I know, I am making it extreme purposely to illustrate my point.

A. That is correct.

Q. But the result, so far as the two companies are concerned, would be a true ratio of their combined business, would it not, whatever the commission allowance was, whether large or small?

A. Probably yes, if you wanted to combine the two companies and report it as one.

Q. Yes. Now, don't you know, Mr. McGee, that in practice and where companies are under the same or virtually the same management, that their commission arrangements between themselves are frequently very violently different from that of individual companies, on the theory that the thing adjusts itself between the two companies anyway?

A. I do not.

[fol. 2712] Q. Do you know what amount of commission was paid or received by the American Alliance upon the business that it transacted during this period?

A. Their average commission in——

Q. (Interrupting.) No, I am talking about the reinsurance commission.

A. I do not.

Q. Now, the expense ratio of the American Alliance for its United States business in 1917, 35.44, 1918, 37.61, 1919, 13.23, and so forth, those expense ratios as they are appearing through a succession of years in their national business are very decidedly lower than the average of companies of equal size in the business, are they not?

A. Not very greatly, no.

Q. How do you class the American Alliance as to its standing respecting volume and size? Is it an average company or larger or smaller than the average?

A. I would class it as one of the smaller companies.

Q. Is it not your observation that the natural—that the average expense ratio of companies of the smaller kind ran during those periods 40 per cent and above?

A. No, sir.

Q. Didn't you find by your experience during those periods that the company—the larger companies in general had a smaller expense ratio than the small companies?

A. No, sir. Some of the largest companies have some of the highest expense ratios.

Q. Have you made any computation of what the combined average expense ratio of all companies in the United States was during those years 1917, 1918 and 1919?

A. No, I had it there, but I didn't consider it necessary—[fol. 2713] oh, the average of all of them? No. In fact, I have only seen one compilation of that kind. I don't remember whose it was. In The Spectator, I believe. That gave something like 300 companies.

Q. Now, the Standard Fire Insurance Tables are purported to give a five-year tabulation ending December 31, 1922, and give the expense ratio to premiums of 43.5 per cent nationally of all of the American companies. Is that about in accord with your observation as to what it was?

A. For that five-year period it seems to me to be high, Mr. Folonie. For the latter part of the period it would probably run that.

Q. That was on an earned basis, Mr. Hogsett has called my attention to.

A. I was going to ask you that; because the figure seems too high.

Q. Are you familiar with the fact that the United States expenses of companies like the American Alliance are adjusted in the reports as between it and its companion company—by the way, its companion company is a much larger company, is it not?

A. Yes, it is one of the largest companies.

Q. Do you know whether the National or overhead expense of those companies are apportioned between those companies having a common office and common office force?

A. Probably so.

Q. You appreciate that those divisions of expense at the home office—I am not talking about the gross amount now, but the division between the two must necessarily be more or less arbitrary?

A. Would be, I suppose, yes; as a matter of agreement.

[fol. 2714] Q. What would you say was the average national expense of the companies—stock fire insurance companies in general, oh, say, back in 1918 and 1919?

A. About 38 per cent.

Q. Is that paid expenses and written premiums?

A. Paid basis I am talking about.

Q. And in 1921 would you say it was higher or lower than it was in former years?

A. Higher.

Q. About what was it then, would you say?

A. Well, I would say probably 40 to 41 per cent.

Q. And insurance, like most other classes of business, had its labor costs, its rent costs, and costs of supplies, and stationery and so on, all increased by the war period, I suppose?

A. I suppose so.

Q. You know of no reason why insurance should have had any different experience than business in general in increased costs of labor for example?

A. No.

Q. Do you think that that accounts in large part for the increase of expense that occurs during those years?

A. Accounts for a very small part of it, yes. There are other elements that account for more.

Mr. Folonie: You Honor, I think this just as good a place to stop as any other if the referee please, if agreeable to you.

The Referee: We may adjourn until ten o'clock.

The Witness: May the witness be permitted to ask one question?

Mr. Folonie: Go head.

The Witness: I would like for you to explain to me these commissions paid by the American Alliance. You [fol. 2715] have hit everything else in there except that. The average commissions paid by that company were right about 31 per cent through the entire five years. They charge up Missouri commission 43.2, 49.3, 56.6, 80 per cent, 41.2 per cent. Why?

Mr. Folonie: Well, I don't know that if I were to answer you that it would be of any very controlling interest to the Commissioner. I think probably we better answer that in another way, if it is material.

The Referee: In the usual way.

We will adjourn until ten o'clock tomorrow morning.

(Whereupon an adjournment was taken until ten o'clock of the morning of the following day, being Wednesday, the 7th day of May, A. D., 1924, at which time parties reconvened at the same place and the following proceedings were had:)

The Referee: Proceed when you are ready, gentlemen.

E. G. McGee, recalled to the stand for further cross-examination, was examined and testified as follows:

Cross-examination (cont'd) by Mr. Folonie:

Q. Mr. McGee, before we adjourned yesterday, you stated that although you had been given the unearned premium figures of the various companies as appear by the calculations in evidence in this case, and as calculated by you, as of December 31, 1916, that you had those figures there on your sheet of paper?

A. Yes, sir.

[fol. 2716] Q. Will you give me those figures as of December 31, 1916, as that unearned figure is contained in the exhibits here in evidence and as computed by you, and I will call off the name of the company in the order in which you testified here and ask you first of 1916?

A. Just a moment, let me see if I have these in order here.

Q. Assurance Company of America was the first?

A. That was one that the company did not give any unearned premium reserve for December 31, 1916. Department figures were $6,514.00.

Q. The Automobile Insurance Company as of December 31, 1916, what was the reported figure and your Department figure?

A. Company figures $25,774; Department figures $22,530.

Q. The Camden Fire Insurance Company?

A. Company figures $29,435, Department figures $28,390.

Q. The Citizens Insurance Company?

A. I don't seem to have gotten the Department figures on here, Mr. Folonie, on that one.

Q. What were the company figures?

A. The company figures, $45,760.

Q. You don't have the Department figure on that?

A. No.

Q. The City of New York Insurance Company?

A. Company figure, $17,286; Department figure, $26,793.

Q. Now, in a case like that, where the Department figure is larger at the beginning of the period than the company's figure, that figure of itself would be productive of a large earned premium figure if used in the computation, would it not?

[fol. 2717] The Referee: Than if the company's figure were?

Mr. Folonie: No, if the Department figure were used at the beginning, of $26,000, as opposed to the company's figure of $17,000 at the beginning of the period. And all the remaining figures were left the same, the Department figure would be productive of a smaller unearned and a larger earned figure than if the company's figure were used, isn't that true?

A. That is true if we used your figures for the balance of the term, yes.

Q. The Concordia, 1916?

A. Company figures $49,713; Department figures, $40,697.

Q. The Continental?

A. Continental Company figures, $289,167; Department figures, $375,000.

Q. The Dubuque Fire and Marine?

A. I don't have the figures on that at all, Mr. Folonie. That was the one that we raised the dispute about premiums there and I didn't have the reserves.

Q. American Insurance Company of Newark?

A. Company figures $167,714; Department figures, $222,591.

The Referee: Read that answer, please, Mr. Blume.

(Question and answer read by the reporter.)

Mr. Folonie:

Q. Federal Insurance Company of New Jersey?

A. Company figures $5,091; Department figures, $3,533.

Q. Firemen's fund?

A. Company's figures $124,394; Department figures, $71,400.

Q. The Hanover?

A. Company figures, $78,499; Department figures $73,-791.

[fol. 2718] Q. Home of New York?

A. Company figures, $506,513; Department figures $630,-982.

Q. Insurance Company of North America?

A. Company figures, $263,834; Department figures, $165,-272.

Q. Marquette?

A. Company figures are not given for December 31, 1916. Department figures are $13,175.

Q. Mechanics of Pennsylvania?

A. Company figures $19,362; Department figures, $20,-425.

Q. Safeguard?

A. Company figures, $4,361; Department figures, $7,050.

Q. Sprinklered Fire and Marine?

A. Company figures, $289,561; Department figures, $321,-025.

Q. United States Lloyds?

A. Company figures, $8,221; Department figures, $4,380.

Q. Westchester?

A. Company figures, $82,459; Department figures, $51,-893.

Q. Century?

A. Company figures for December 31, 1916 are not given, and neither are the Department figures for the Century.

Q. Well, they are just the same, then, your figures and the company's.

Q. London & Lancashire, 1916?

A. Company figures, $67,458; Department figures $86,-849.

Q. London & Scottish Assurance?

A. Company figures, $1,425; Department figures, $950.

Q. Northern Assurance?

A. Company figures $131,669; Department figures, $133,-080.

[fol. 2719] Q. Phoenix Assurance of London?

A. Company figures, $160,952; Department figures, $115,034.

Q. Now, in the case of the Firemen's Fund Insurance Company, to take the unearned premium figures as given by the company in their figures as of December 31, 1916, of $124,394, and you have figures of $71,400 at the beginning, have you not?

A. Yes, sir.

Q. No, if—on what basis did you or how did you figure out the unearned figure of the company as of December 31, 1916? What was your source?

A. Using the net premiums for Missouri as shown in the tax report for that year, and the total premiums for the United States as shown by the annual statement; showing the proportion of Missouri premiums so obtained to the total premiums.

Q. Now, are those figures of the net premiums as reported in the tax statement, are they on the basis of the company's direct writings or on the basis of their authorized net taking into account authorized reinsurance or upon the absolute net, taking into account all the reinsurance, whether authorized or not?

A. Gross premiums less reinsurance in companies authorized to do business in Missouri and return premiums on canceled policies.

Q. Now, you say you got the figure from the tax statement as to the net premiums?

A. Yes, sir.

Q. And when I ask you about the firemen's fund, I am just doing that to point the thing. Is that also true, then, of your conduct as to all of this group?

[fol. 2729] A. Yes, sir; the entire calculation of that reserve was made in the same manner, except, of course, for '16, we used the figures that show on your sheets as filed in the suit.

The Referee: Will you read that answer, Mr. Blume?

(Answer read by the reporter.)

Mr. Folonie:

Q. What do you mean by that?

A. The net premiums as you report them in your exhibits filed in this suit were the ones used for '17, '18, '19 and '20.

Of course, you filed no exhibit of premiums for 1916 and consequently for '16 we took them from tax reports.

Q. Now, as a matter of fact, those tax reports for the year 1916 are not existent in your department, are they, Mr. McGee?

A. They are, yes, sir.

Q. You had access to them in preparing these tabulations?

A. Yes, sir. We are short only three years of the tax schedules.

Q. What years are you short?

A. '17, '18 and '19.

Q. I ask you that question because I have been informed that they were missing for 1916.

A. I understand we have had several searches for those tax schedules and those three years that became misplaced in the moving around of that department.

The Referee:

Q. But the files for '16 are in your possession?

A. '15 and '16, yes, sir.

Mr. Folonie:

Q. Also for 1921?

A. 1921, yes, sir; and '20.

[fol. 2721] Q. Now, did you have in any of the records to which you had access an absolute net figure for the purpose of ratios—I mean those taking into account all reinsurance, authorized and unauthorized?

A. No, the figures that I used were the ones that you filed in this suit, Mr. Folonie; less authorized reinsurance and return premiums.

Q. My question was whether the absolute net, by which I mean the net taking into account all the reinsurance, whether authorized or unauthorized, whether you had or used those figures.

A. I did not; I didn't have them.

Q. Now, there was a group of companies, of which the Nationale of France was one and in which I understood you to say that instead of putting in the net paid losses and the unpaid losses and the reinsurance recoverable, that the

figure entered on their exhibit was that of the net incurred losses. Do I correctly state your position on that?

A. Just a moment until I find that sheet.

Q. I am speaking now of the incurred loss items, Mr. McGee.

A. Yes, sir.

Q. Now, do I correctly state your position that as to that company, your viewpoint of it is that in their filed statement herein, instead of putting in net paid losses and the unpaid losses outstanding and reinsurance recoverable, they simply enter "Net incurred losses" in their statement?

A. Yes, sir; with the note down below where it calls for reinsurance recoverable, they have marked there that "Not available."

[fol. 2722] Q. Yes?

A. And if that is not available, the net incurred could hardly be correct.

Q. That is as I understood you. I was reviewing what you had previously said so as to make certain you and I were talking about the same thing. Now, if, Mr. McGee, that company in its records, instead of keeping its losses in its permanent records as "Paid" and "Unpaid" and "Reinsured" kept them in their permanent records as an incurred loss item and made their calculations of the incurred figure and reproduced it here, wouldn't that be the correct conclusion to which we are entitled to come, and to which our efforts have been directed here?

A. If their books are kept that way, they could, of course, furnish a correct figure.

Q. Yes. Now, you have no knowledge to the contrary, have you?

A. I have not. Neither have I confirming that view of it.

Q. Now, you have mentioned here a group of companies in which the expense ratios in Missouri were materially variant from the national expense ratio, and I will call your attention to some of those companies; first the American Alliance, I think you have already stated that you knew that they were under the same management and managed by the same officers and from the same location as the Great American Insurance Company.

A. Yes, sir.

Q. Have you undertaken to put together the figures of the Great American Insurance Company and its associated or running company, the American Alliance, and the Massa- [fol. 2723] chusetts Fire and Marine Insurance Company—by the way, that is under the same management, too, is it not?

A. I don't know about the Massachusetts Fire and Marine.

Q. Well, I will state it to you as a fact that they are all under the same management and managed from the same office and having the same headquarters. You have not undertaken to put those figures of those companies together to ascertain whether a reasonably just relation exists between the combined Missouri ratios and the National ratios of the combined figures of those companies, have you, Mr. McGee?

A. Certainly not.

Q. Now, do you have any reason to doubt that where such companies are under the same management, that the division or allocation of their expense is likely in many cases to be more or less arbitrary and therefore apparently disproportionate as considered in the light of other companies not having such joint relations?

A. I can see no reason in the world where two companies under the same management would have expense that differed 50 to 75 per cent.

Q. And that although one of those companies might see fit by arrangement with its associate company to take over all of its or a great part of its business without allowing any commission to the other company at all for taking over the business?

A. If you can show that such a state of affairs exists, it might account for some of it.

Q. Well, now, in the case of the American Alliance, if you knew that the American Alliance had all of its head [fol. 2724] office expense furnished to it free during the period of these years, and was charged with no part of it on the books kept jointly for it and the Great American, at its home office, would that account for the United States average expense of the company being quite materially less than that of its running mate and other like companies?

A. It would account for it being less, but it certainly does not account for it being a great deal more, which is the case here.

Q. Now, isn't the fact that the United States expense of the American Alliance for 1917 was in fact materially less and that it was only 35.44 in that year 1917—isn't that the fact?

A. That was the United States expense of the American Alliance, and, as I remember, the Great American is a little above that.

Q. Yes, sir. Now, you know that the Great American is a much larger company doing a much larger volume of business, isn't that a fact?

A. Yes, sir.

Q. And that if the Great American had absorbed the overhead or a considerable part of it, of the American Alliance, that adding that sum to the Great American's expense item would not raise its expense ratio anything like the extent to which it would reduce the American Alliance expense ratio, isn't that a fact?

A. Yes, sir.

Q. Now, if part of the expenses of those companies so under joint management are for purposes purely inherent to themselves, or according to their own idea, whether right or wrong, are so absorbed by the larger company in part [fol. 2725] from the smaller running mate, the combined experience of the two when produced, even though it might produce a dislocation of the ratios of each, the combined experience of the two would show the true fact, would it not—assuming their records were properly correct?

A. Certainly, if you want to throw them all together and consider them as one company, but that is not being done.

Q. Well, do you think that if they had been transacting their business as I indicate, and one of them had in fact been paying the head office expense which it might, but did not charge to the other smaller company, don't you think that the proper proceeding here is to show those figures as they appear on their books rather than attempt to adjust them to make them look nicer?

A. It appears to me——

Q. (Interrupting.) No, but can't you answer that question? Don't you think that we should in producing our

figures here, if they had divided them in what you consider an inequitable manner between them, don't you think we in producing our figures here should produce them as they are rather than the way we think they ought to be?

A. Certainly, that is what I think should be done, but I don't think you have.

Q. Well, that is the point of difference. Now, in the case of the American Eagle, which is the next company which you mentioned where their expense ratios did not suit you, I will ask you whether that is not one of the so-called Henry Adams group of companies.

A. Yes, sir.

[fol. 2726] Q. You know, do you not, that the Continental Insurance Company, the Fidelity-Phenix Insurance Company and the American Eagle Insurance Company are all under a common management, having their head office in the same building, and having the chairman of the board a virtual dictator of those companies, Henry Evans?

A. Yes, sir; at least that is my understanding of the situation.

Q. Now, the next of the companies wherein the ratios were not to your liking, was the Citizens Insurance Company. You know that that company is controlled and virtually owned by the Hartford Fire Insurance Company, do you not?

A. Yes, sir.

Q. And the next was the Continental Insurance Company, that is one of the Henry Evans group, is it not?

A. Yes, sir.

Q. Now, the Franklin Insurance Company, that is associated with the Home Insurance Company, is it not?

A. Yes, sir.

Q. The same management and the group of officials managing both companies, from the same offices?

A. Yes, sir.

Q. Now, the Pacific Fire Insurance Company, that one is in the Thompson group of companies and is under the same management and run from the same place and controlled by the same persons as the Globe & Ruttgers Fire Insurance Company, is it not?

A. I don't know about that.

Q. And the Orient Insurance Company you mentioned here, it is run and managed out of the same offices and un-

[fol. 2727] der the same control and management as the London & Lancashire, is it not?

A. The Western Department is, yes.

Q. You have mentioned some publications of a Mr. E. G. Richards.

A. Yes, sir.

Q. What publications of those was it that you mentioned?

A. Pamphlet on "Experience Rate-Making," and the other was on "Method of Determining Underwriting Profit."

Q. Yes. Is that Mr. Richards personally known to you or is he known to you only through his publication?

A. Only by reputation. I never met the gentleman.

Q. Did you in undertaking to formulate the figures you have given here, which you say was according to the methods of Mr. Richards, did you carefully study his printed works in formulating the figures that you gave here, purporting to be according to his testimony?

A. Yes, sir.

Q. What character of premiums did you use in making your Richards' calculation, by which I mean the calculation according to Richards' theory, as you understand it. What character of premiums did you use in making your calculations, written premiums or earned premiums?

A. Net written.

Q. I beg your pardon?

A. Net written.

The Referee: Net written?

Mr. Folonie: Yes.

(Whereupon a recess of five minutes was taken, pursuant to which the following proceedings were had:)

[fol. 2728] Mr. Folonie:

Q. Now, I will ask you, Mr. McGee, showing you Mr. Richards' published book on "Experience Grading and Rating Schedule," and call your attention to the tables appearing at page 20 and at page 26, and ask you whether it is not a fact that Richards, in every tabulation which he makes to ascertain experience, has used as his basis not the premiums at all, but the amounts insured or the amounts at risk.

A. He has used the premiums.

Q. I will ask you to take a booklet of his here presented and show me any place in any table which he has given in that book or any statement in the book where he indicates the use of the premium as the basis as distinguished from the amounts at risk.

A. I didn't say that I used that book in studying his method of profit, and I don't know whether it is in the book or not.

Q. I will ask you to show us any publication of Richards or any book or any paper that he has written at any time in which he advocates premiums as a basis of computation or profit and loss as distinguished from amounts at risk.

A. "Fire Underwriting profits as related to experience rate-making" and "Supplement to a chapter on 'Underwriting profits—A National Question.'"

The Referee: Read the remainder of it.

A. "By E. G. Richards."

The Referee: Give the name of the publishers, and the date, for identification purposes.

A. Published by "D. Van Nostrand Company, Eight Warren Street, New York, 1924."

[fol. 2729] On page 13 of this pamphlet Mr. Richards gives a table, the headings of which are, "Net Premiums," "Expenses," "Paid Fire Losses." Under those headings he gives the net premiums, the expenses and paid fire losses for 22 years, 1901 to '22, inclusive. He divides that 22 years into four five-year periods and illustrates on pages 14 to 16 his method of arriving at the underwriting profit for each five-year period. Using net fire premiums on page 13, "Paid Fire Losses," from page 13; and then an item, "Increase in unpaid losses from January 1, 1901, to December 31, 1905."

Q. Is it not a fact that the tables you have mentioned are tables which he has prepared, not as those advocated by him but tables designed and intended for comparative purposes to illustrate his system as set forth in his larger work and his comprehensive work entitled, "Experience Grading and Rating Schedule designed to be United States standard for measuring fire insurance company costs based upon combined experience averages," published in the year 1915.

The Referee: By whom?

Mr. Folonie: The name of the publisher is not in here. It is the same authority, E. G. Richards.

A. Have you completed your question?

Q. Yes.

A. Beg your pardon, I thought you had some more to add to it.

Q. No. I would say in this pamphlet Mr. Richards most certainly does advocate that method of ascertaining underwriting profits.

[fol. 2730] The Referee:

Q. Which method do you mean? Premium method?

A. The method which I have just read here, using net premiums, losses and expenses and in this pamphlet he explains three methods which he designates as the E. G. R. schedule, page 16. 16 is a summary of the illustrations he has given for the five years.

Another he designates as the foreign companies method and the other as the relation of Insurance Commissioners of National Board Committee, adopted in December '21; and he certainly advocates in this pamphlet what he designates as the E. G. R. method.

Folonie:

Q. I will ask you whether or not in that booklet which you have before you, whether you agree or disagree with what he says on page 2 of that pamphlet, as follows: "The figures thus presented cover an exceptionally wide range of underwriting experience."

A. Page 2 did you say?

Q. Yes.

Mr. Barker: Middle of the second paragraph.

A. All right.

Mr. Folonie:

Q. "They will prove to the candid investigator that not only the actual profits earned by the stock fire insurance companies during the period named have in the aggregate been moderate and reasonable, but also the method by which

the ratios of those profits, as herein set forth by the writer, is sound and defensible."

Mr. Barker: Wait a minute, we object to that as self-serving, hearsay and not cross examination of the E. G. Richards method of rate-making, but a mere expression of [fol. 2731] opinion by Mr. Richards as to whether or not the profit has been greater or less, and could have no bearing upon the Missouri situation.

The Referee: Overruled.

(To which action and ruling of the referee, the defendant, by counsel, then and there at the time duly excepted, and still excepts.)

Mr. Folonie:

Q. The question is whether you agree or disagree with that, Mr. McGee.

A. I disagree.

Q. At page 4 of that pamphlet, I call you attention to the following language, and ask you whether you agree or disagree with what he there says:

"Second. Neither five nor ten years experience are sufficient to furnish reliable loss averages for such estimates."

Mr. Barker: We make objection to that because the Missouri statute limits the inquiry to five years, and Mr. Richards' opinion, of course, could not control our statute.

The Referee: Overruled.

(To which action and ruling of the referee, the defendant, by counsel, then and there at the time duly excepted and still excepts.)

A. Just what part of the page is that?

Mr. Folonie:

Q. At the top of page 4, right at the top.

A. I see it, where it says, "Second"?

Q. Yes.

A. That has nothing in the world to do with figuring profit or loss.

Q. I am asking you whether you agree or disagree with that.

A. Let me explain first——

[fol. 2732] Q. No, I want you to answer the question, whether you agree or disagree.

The Referee: Then you may explain if you choose.

A. All right, I agree with Mr. Richards exactly, that when you undertake to do experience rate-making, that five or ten years is not sufficient data to give you the experience necessary to formulate a rate. That is what he is stating there, and I am agreed with that. So would any sensible man.

Mr. Folonie:

Q. Then if rates were formulated in 1920 in the State of Missouri upon such basis, you would say that the experience that had been had since 1920 in that would be a matter improper for any consideration in determining the propriety or validity of such rates?

A. I don't just catch the drift of that question.

The Referee: Read the question, Mr. Blume.

(Question read by the reporter.)

A. Under the present method of rate making, I would say that it should be considered.

The Referee:

Q. That it should or should not?

A. Should.

Mr. Folonie:

Q. And in making that answer, you think that is consistent with your last preceding answer that you agreed that neither five nor ten years experience is sufficient to furnish reliable loss averages for such estimate?

A. There is not a particle of inconsistency because they refer to two entirely different systems of rate making. Mr. Richards is referring there to a rate based upon the experience of the companies similar to the method by which [fol. 2733] life insurance company rates are arrived at. The fire companies have never had such a rate, and as Mr. Richards himself says, it doesn't even approach an experience rating.

The Referee:

Q. What does not approach an experience rating?
A. The method used by the fire companies.

The Referee: Proceed.

The Witness: It is what is termed schedule rating, which is a very distinct and separate proposition from the experience rating, to which he refereces; the schedule rating is arbitrary and any changes made in it should be subject to correction whenever they are found to be incorrect.

Mr. Folonie:

Q. I will ask you whether you agree or disagree with his statement at page 5 of the pamphlet, which you produced where he says, "The terms 'earned premiums' or 'unearned premiums' as generally used are misleading because all premiums are the property of the companies, even though the insurance contracts for which they were paid have not terminated"?

A. I am agreed with it, fully.

Q. Do you agree or disagree with what he says at page 6, at the top of the page: "all premiums earned or unearned are admittedly the property of the companies and as unquestionably so as are the funds received by the Government for postage, or the moneys paid for transportation belong to the railroads or express companies, or interest paid to the banker in his property and not the borrower's even though the service for which those moneys were paid has not been rendered."

(fol. 2734) A. That is simply the other question in different form.

Q. Well, do you agree or disagree with that?

A. I could only answer in the affirmative.

The Referee: Meaning thereby that you agree with it?

A. Yes, sir. Let me modify that answer just a trifle, Mr. Folonie: Under certain conditions there might a small portion of that in a way become the property of the policyholder, that is, in the event of the cancellation of the policy. Then the policyholder would——

Mr. Folonie (interrupting): Well, I mean, while in the hands of the company uncanceled and the obligation of indemnity still incompletely——

A. (Interrupting.) That is what I supposed was the meaning of the question, but I wanted to modify that so as to make it entirely clear.

The Referee: Let's see if I understand your meaning, Mr. McGee. That you think the fund belongs to the insurance company notwithstanding the fact that there may be a contingent liability to return a portion of the premiums paid because of the cancellation of policies, and perhaps for other reasons?

A. Yes, sir.

Mr. Folonie:

Q. Do you agree or disagree with his statement at page 8: "Little argument is needed, after a study of the figures which follow, to show that a five-year period is insufficient for obtaining a just average of underwriting profit or loss in the United States." Do you agree or disagree with that?

A. I am inclined to agree with it. The period should be longer to obtain an accurate estimate of it; however, that has nothing to do with the present proposition, as our [fol. 2735] term is fixed; whether I agree or disagree with it does not affect it.

Q. Do you agree or disagree with his statement at page 11: "Those states where conditions were most favorable would have (as they now have) the lowest ratios of loss and expense and consequently the lowest rates for insurance, but in other states where unfavorable conditions prevailed such as excessive taxation, anti-coinsurance, anti-compact or valued policy laws, the ratios of loss and expense would inevitably be higher (as is now the case) and the experience rates made therefrom correspondingly higher and so remain until such loss and expense producing laws were modified or repealed." Do you agree or disagree with his views?

A. I will agree with it.

Q. Do you think, Mr. McGee, that a state having valued policy law will with proper and reasonable underwriting methods of companies have a higher loss ratio than states not having a valued policy law?

A. Might possibly have some slight effect on it. I don't think any very great effect, however.

Q. Do you think that the presence of anti-coinsurance and anti-compact laws has a tendency to increase the carrying cost of insurance?

A. I am not very sure that I do, Mr. Folonie. In fact I have no very decided opinion on that point.

Q. I will ask you whether you agree or disagree with the statement in the booklet you have produced at page 18: "Nevertheless the increase in the expense of transacting the fire insurance business has been much less than [fol. 2736] that in most other businesses and certainly than in the general cost of living." Do you agree or disagree with that?

A. Not being familiar with the costs of other businesses, I don't think that my answer would amount to anything, whether I agreed or disagreed. I have not information enough——

Q. (Interrupting.) You mean you have no opinion one way or the other?

A. I have no information on which to base an opinion, Mr. Folonie, except as to the high cost of living. I have gone against that.

Mr. Folonie: The court asked a while ago for the name of the publisher of this experience grading and rating schedule to which I referred. I find it is in the back instead of the front. It is the De Vinne Press; the year of the publication is 1915.

Q. Now, I will ask you, Mr. McGee, whether you agree or disagree with the views of this same author appearing at page 41 of the book which I have called to your attention in your experience grading and rating schedule, where he says:

"The classified result of an occupancy class furnished by a single average loss because for the risks embraced therein although that class contains the good and the poor, and the exposed and the unexposed, until the cost can be virtually known and each of these varying kinds classified, experience can be of slight, if any, value in rate-making."

A. Mr. Folonie, frankly, I know absolutely nothing about the rate-making proposition.

[fol. 2737] Q. All right, I guess that answers it.

A. I have never made any study of it nor had any thing to do with that end of it.

Q. All right. I call your attention that the author in a comparative grading of the experience of the companies state by state, in assigning to them proportions or relative experiences shows Missouri experience for the period tablulated by him from 1903 to 1912 to be 1.057 as compared with the District of Columbia, .528, as indicating the relative cost to amounts derived. I will ask you whether you have made any comparative study of insurance costs in the various states and subdivisions of the United States sufficient to state that the experience in the State of Missouri through the period indicated, indicated a cost to the companies, a carrying cost for loss and expense of approximately double that of the District of Columbia?

A. I have not.

Q. And that the Missouri experience, as tabulated by him, is over 30 per cent above that of the average of the other states of the Union?

A. I know nothing about his tabulation at all, Mr. Folonie.

Q. Have you made any comparative study of the Missouri experience as compared with the experience in other states to have any relative opinion as to their experience?

A. I have made no study at all of the experience of other states except Missouri. That has been trouble enough for one man.

Q. You are not going to eliminate Mr. Hyde entirely from assisting a little, are you?

The Witness (interrupting): I didn't eliminate anybody that I know of.

Mr. Barker (continuing): —the insurance companies could furnish the experience in other states better than we could, couldn't they, Mr. McGee?

A. Certainly could.

Mr. Barker: Mr. Folonie has them all, hasn't he?

A. We have nothing to go on to get it.

Mr. Barker: I would be glad to see them.

Mr. Folonie:

Q. Is it not a fact, Mr. McGee, that the method of applying the Richards' theory of experience grading and rating requires the re-rating and re-grading of every risk in the United States, or in the territory where it is to be made applicable?

Mr. Barker: Your Honor, I think that is all objectionable; for the reason that this witness has not testified as to anything said by Mr. Richards as to ratemaking and classifying property. He has simply taken Mr. Richards' formula on underwriting profit. Now, Mr. Folonie asks him about what Mr. Richards says about classifying property. This witness has not been interrogated as to that and it is not germane to the subject on which he was examined.

The Referee: Read the question, Mr. Blume.

(Question read by the reporter.)

The Referee: Overruled.

(To which action and ruling of the referee, the defendant, by counsel, then and there at the time duly excepted, and still excepts.)

[fol. 2739] A. As I said a while ago, Mr. Folonie, I know absolutely nothing about rate-making.

Mr. Folonie:

Q. No, but I am asking you whether the plan or method as he advocates it in his writings does not contemplate as a necessary condition precedent to putting his method into force the re-rating and regrading of all the property in the territory where his system is to be installed?

A. I assume that it would as a method advocated by him is entirely different from the one in use.

Q. And just to put it in a nut shell, he advocates quality grading by taking the qualities of the risks distinguished from their occupancy feature and grading according to quality, does he not?

A. That is my understanding.

Q. Yes. If, Mr. McGee, the theory of setting out or setting up unearned premiums were to be abandoned in your relations to the companies and a company with three mil-

lion dollars of existing insurance on its books at December 31st of a given year, some of it one year business, some of it three years, and some five year business, the company having a capital of say three million dollars, setting up no reserve of any kind for unearned premiums, and having a surplus of $100,000, would you regard that company as one reasonably entitled to enter this state and continue doing business in that financial condition?

A. Couldn't enter Missouri at all without setting up that reserve.

Q. Well, that still doesn't quite answer the question. I am not speaking now of whether the law requires it or not, or whether your rules require it, but whether in your judg[fol. 2740] ment if that came up to you in just that position, whether you would regard that company in such financial condition as would warrant you in admitting it to do business in your own state—if you had it to pass on?

A. I would not.

Q. Why not?

A. Because I don't think it furnishes the policy holder margin enough of safety and margin enough of protection.

Q. Now, isn't it a fact, Mr. McGee, that the setting aside of a reserve equivalent to a given proportion of the premiums attendant upon their term, as an unearned premium reserve, is a measure designated to automatically guarantee if they reach that standard—to automatically guarantee as far as human methods may go that they will be in financial position to respond to their liabilities?

A. That was the intention of it.

Q. Well, do you from your experience believe that a reserve for unearned premiums is an appropriate method of safeguarding the security and solvency of the companies making statements?

A. I know of no better method, Mr. Folonie.

Q. Now, you made a suggestion as to or mentioned Mr. Richards' suggestion, I think, of a profit or an amount in the unearned premium figure which upon the running off of the business would accumulate to the companies as a profit—I am directing your attention to this now so you will get the purpose of my question and not to be a part of the question itself—I will ask you to assume a case of a policy written at a premium of $100, on the average period—the aver-

[fol. 2741] age period of policies written throughout the United States has been computed to be about two years and seven months—has it not, Mr. McGee?

A. I don't know.

Q. Well, that has been the figure which has been published by the National Board as the average period of all the policies written in the United States; and I will ask you whether in your judgment and from your experience, whether that is approximately correct?

A. I have no idea, Mr. Folonie. I have no way in the world of finding out those proportions and no data on it.

Q. Well, assume it for the purpose of my question, then.

A. All right.

Q. If under the existing methods of setting aside reserves a policy which was written during a current year for the period of two years and six months—I will lop off the extra month so as to get it to half yearly figures—a policy having a term of two years and six months written during the current year, would, under the present method of setting aside reserves require an unearned reserve of $80 on the $100, would it not?

A. I don't remember just what those figures are, or those proportions.

Q. Well, I have an annual statement blank here.

A. Perhaps it will give it there. If you consider that necessary.

Q. Well, at least advisable.

The Witness: We will look at one and see. (Examining annual statement.) You are assuming that it had two and a half——

[fol. 2742] Q. (Interrupting.) It was a two and a half year policy written during the current year.

A. Well, there are no figures given for two and a half year policies. Suppose you make that three years, it will illustrate just as well, will it not, Mr. Folonie?

Q. Well, in the method you assume six months to have elapsed on the theory that the policies written during the year have on the average run six months and that would be two years to run?

A. On the one year business, that is true.

Q. Well, don't you assume six months to have elapsed on all policies written during the current year?

A. They are divided in those periods here, but there is no figure given there for a two and a half year term.

Q. Well, what is it for three years?

A. For three years written during the current year would be one-half. Five-sixths of it would be set up as unearned premium reserve.

Q. Now, in the three-year policy written during this year which on the average of all policies would have run six months, on a three-year policy you would have two and a half years unearned and one-half year earned, would you not?

A. Yes.

Q. And that two and a half years reduced into halves would be five parts as opposed to one part of the current year?

A. Yes.

Q. That is the way they get at the five-sixths, isn't it?

A. Yes.

Q. And the policy for two and a half years you would have four parts to come and one part expired, which would [fol. 2743] be four fifths or eighty per cent, isn't that right?

A. Yes, sir.

Q. Now, I suggest a period then having a two and a half years term, a policy having a two and a half year term and written during the current year, the unearned part of $100 would be $80 and the earned part would be $20, is that correct?

A. Yes, sir.

Q. Now, taking the paid expenses figures in Missouri for our five-year period, which are 44 plus, and our paid loss figures as here in evidence of 62 plus, I will ask you whether the following would not be the result for a two and a half year policy on which a total premium of 100 was received—and assuming that no cancellation occurs, and taking its status comparatively as of December 31st of the year during which it is written; of the losses upon the average, one fifth of those would occur during the first one-fifth of the period the policy had to run, would it not?

A. Probably so; nothing definite about that.

Q. And assuming the one-fifth of the 62 per cent, or $62 on the $100 of the paid losses, that would then be $12.40

as the proportion of losses coming during the first one-fifth of the term or during the current year in which the premium had been earned?

A. Yes.

Q. And of the expense of 44 plus, taking one-fifth of this and applying it to the earned period, that would be 8.88, is that correct—one-fifth of 44?

A. I think it is.

Q. Now, having losses of $12.40 and expenses of $8.88, you would have an outlay of expenses and of losses in [fol. 2744] excess of the $20 of earned premiums that you had during this first year, would you not?

A. Yes, sir.

Q. And that would still have made no provision for profit or conflagration figure out of that. Now, taking the unearned amount of $80, taking the losses four-fifths of the time having still to come, and taking four-fifths of that loss figure of 62, that would be $49.60 as the losses anticipated to be had during the remaining period of that policy, would it not?

A. I didn't catch that question exactly.

Q. Taking four-fifths of the loss figure, which is 62 plus, that four-fifths would be $49.60, would it not of anticipated losses?

A. Yes.

Q. And taking four-fifths of the expense, that would amount to $35.52—four-fifths of $44, would it not?

A. Yes—I am assuming that your arithmetic is correct.

Q. Now, if you were going to consider a five per cent profit on that $80 of premiums, that would be $4, would it not?

A. Yes.

Q. And if you were going to consider a conflagration charge of three per cent, it would be $2.40 against that figure?

A. Yes, sir.

Q. Now, if you were going to pay all of your losses and expenses out of the premiums, then having had a deficiency of the earned premium of $2.88 and a loss proportion applicable to this unearned figure of $80 of $49.60, and expenses applicable to that portion of the premium of $35.52,

[fol. 2745] and assuming a profit of $4 and a conflagration charge of $2.40, that total as against the unearned part, $94.40. Now, I will ask you where there is any profit, either in the earned premium or in the unearned part of that premium allocating the losses and expenses relatively to the two parts in the proportion as they bear one to the other for the time that they cover.

A. Figured on a single policy does not illustrate anything; doesn't illustrate a correct or incorrect method of figuring.

Q. And if you take $100 as your standard and multiply it by as many hundreds of dollars as there are in it, doesn't your proportion and relation between the two come to exactly the same thing?

A. Not necessarily.

Q. If instead of $100 of premiums you make it $100,000, wouldn't it simply multiply the two parts by $1,000?

A. So far as premiums were concerned, yes.

Q. And wouldn't your $100,000 of losses, having a loss and expense ratio of 44 and a $100 premium having an expense ratio of 44, bring identically the same relative amount of expense to each?

A. Yes.

Q. And wouldn't a loss experience of 62 per cent, related to an aggregate amount of premiums or to a single policy, applying the same ratio of 62 to both, bring the same relative result?

A. Yes. As far as the unearned premium reserve, it is an entirely different proposition.

Q. Now, if a company had a policy for $100 presented to it for acceptance and had to put up a reserve of $80 against that policy and if they paid a commission of 25 [fol. 2746] per cent, which the agent deducted before remitting, the company would only get $75 altogether, would it not—net to the company?

A. Correct.

Q. And if it had to put up a reserve of $80 or $90 on that policy, it would have to have recourse to its assets, either its earned premiums or its accumulated surplus, and some other moneys of the company to set up a reserve, would it not?

A. Yes, sir.

Q. And if that reserve or a part of it is set up out of the general assets of the company, either by accumulations from earnings, contributing contributions by stockholders, or by earned portions of the premiums, do you think it is improper business practice upon the termination of the liability of the company to become reinvested with that money which it has put into the reserve in the interim?

A. I don't just catch that question.

Mr. Folonie: Read it to him, please.

(Question read by the reporter.)

The Referee: Let me suggest, Mr. Folonie——

Mr. Folonie: Yes.

The Referee: The termination of the liabilty of the company, is it improper for the company to become re-invested?

Mr. Folonie: Yes, that is the intent of my question.

Q. Do you see any impropriety if the company has put a part of its assets into a reserve upon the running off or termination of the contingency upon which that reserve has been set up, do you see any impropriety in the company re-investing itself with that money, upon the termination [fol. 2747] of that contingency?

A. Why, it automatically re-invests it with it.

Q. Well, do you see any impropriety in that?

A. Why, certainly not. I couldn't get what you were driving at. That is rather a self-evident proposition.

Mr. Folonie: It seems to me so, too, and I wanted to see if you and I agree on self-evident propositions.

The Witness: I thought there must be something else in it.

The Referee: Pardon me. In view of the conditions about which you have just been testifying, can you state whether or not it is reasonable practicable for an insurance company to engage in a fire insurance business, stock fire insurance company, irrespective of any law or governmental requirement on the subject, without having the surplus or capital to be used in its business?

A. To make it a safe company, Your Honor, I would say that it must have a surplus.

The Referee: Proceed.

Mr. Folonie:

Q. Now, you are speaking now of a stock company, are you not, Mr. McGee?

A. That would apply just as well to a mutual, as far as that is concerned.

Q. Well, in the case of a mutual or a reciprocal company, instead of putting up money for surplus, those companies have recourse to the financial responsibility of their members as a source from which to get moneys in case of contingencies which a stock company does not have, isn't that true?

A. Yes, the mutual has recourse on its policyholders to a certain extent and the reciprocal to the whole extent of the loss.

[fol. 2748] Q. As to a company operating on the reciprocal plan, except for its operating expense, while it might be desirable, it is not an absolute essential that they have any surplus, is it?

A. Well, it is not a legal requirement, but as a matter of safety, I would say they ought to have.

Q. Well, but they can do business without it, can they not?

A. Oh, yes.

The Referee: Reciprocals you are now inquiring about?

Mr. Folonie: Yes.

Q. A stock company, however, not being able to go to its policyholder or to the stockholders—having paid his stock in full, they must make that provision in advance to meet their responsibilities instead of making good their shortages subsequently by assessment, as the reciprocal or mutual company would do, isn't that the essential difference?

A. Yes; there is a difference in method; decidedly.

The Referee: Just a moment there. Is this a fair statement of the situation, then, Mr. McGee: that as a business safeguard for the benefit and protection of the policyholders, the capital or rather the money paid in for the capital stock of a stock company, plus the surplus, stands in the same relation to the stockholders and to the company

as the liability of mutual policyholders or reciprocal policyholders stands to the mutual and reciprocal companies?

A. Yes, sir.

[fol. 2749] Mr. Folonie:

Q. In other words, in one case the money is actually advanced and in the other case security is advanced, which may be called on when required?

A. That is about the substance of it.

Q. Now, I call your attention to your figures of written premiums which you recited here, running in amounts, leaving off all the thousands and hundreds—1917, eleven million, 1918, thirteen million, 1919, sixteen million, 1920, twenty-one million, 1921 nineteen million, and now I will ask you whether with business of the same general type and term, whether the amount of the earned premium upon the $11,000,000 in 1917 you would expect to be greater or less than that of the $19,000,000 of premium writings in 1921?

A. Expect it to be less.

Q. Beg pardon?

A. You would expect it to be less.

Q. You would expect the $11,000,000 to be productive of less earned premiums than the nineteen million?

A. Oh, excuse me. I thought you said unearned.

Q. No, I am speaking of earned first now.

A. It would not produce quite as much earned premium.

Q. If a new company starting in business at the beginning of the year 1917 and never having done any business at all before, should do $11,000,000 worth of business in the year 1917, would the earned and the unearned parts—would the earned premium derived by that company in the year 1921 from $19,000,000 of writings in that year in your judgment become greater or less?

A. I am thick-headed this morning, Mr. Folonie, some way. I have a little bit of a headache and it is hard to keep track of your long questions.

[fol. 2750] Q. Well, it is perhaps a little involved. In the case of premiums, eliminating now that portion which goes into the earned and unearned figures from a previous year's business, simply to get the earned and unearned

parts of the current year's writings, is the earned premium greater out of that year's business itself in the year when the written premiums are larger than in the former year or not?

A. I still don't get what you mean.

Q. Well, I will put it in another way.

Mr. Barker: I wish I could understand it.

Mr. Folonie:

Q. Assume that the ratio between the earned and the unearned on current writings which I am assuming are of the average of two years and six months should be and are as 20 is to 80—putting that or applying that to dollars and cents, in a year where there were ten million dollars of premiums and 20 per cent was going into earned and 80 per cent into unearned you would have—and then take another year, the following year when the premiums income or writings were doubled wouldn't the earned premium derived from that year's writings, considered by itself, be increased in the year when the premium increased?

A. Yes.

Q. And wouldn't the unearned premium also be increased in the year when the larger premium writing was done?

A. Yes.

Q. In other words, the proportion which go to earned premium and go to unearned premium, the proportions would remain the same, assuming the same term of business written, but the amount would be increased in the year of a [fol. 2751] large premium writing?

A. Yes.

Q. Would you not, therefore, anticipate that from a premium—written premium basis of $11,000,000 in 1917 to a written premium basis of $19,000,000 in 1921, that there would be, just considering those years by themselves, without any of the preceding or subsequent years, a larger amount of unearned premiums in 1921 than there would be in 1911?

A. Yes.

Q. And there would also be a larger amount of money derived as earned premium in the year 1921 year than would in 1917, would there not?

A. A larger amount of earned premium derived in the 19 than in the 17?

Q. Yes.

A. Considering the year alone, without considering the previous year, it would.

Q. Yes, that is the way I am asking you to consider it now.

A. Considered in conjunction with the other years, I think it would give a much different result.

Q. Now, taking that year's premium writings by itself, without taking their increment which came from the previous year into consideration at all, the relationship between the earned and unearned in 1911 and in 1921, assuming the same character and type of business, would be a stable and like ratio, would it not?

A. Yes.

The Referee:

Q. Did you say the year 1911 and 1921 in that question?

Mr. Folonie:

Yes. When I said 1911 I meant 1917.

[fol. 2752] The Witness: There would be no question about that because the statute fixes that proportion. I don't see what my idea about it has to do with it.

The Referee: It is twelve o'clock, gentlemen. We will adjourn now until tomorrow morning at ten o'clock.

(Whereupon, an adjournment was taken until the following morning at ten o'clock a. m., the same being Thursday, the 8th day of May, 1924, at which time parties reconvened at the same place, and the following proceedings were had:)

Mr. E. G. McGee, recalled to the stand for further cross examination on behalf of the defendant, was examined and testified as follows:

Cross-examination (cont'd) by Mr. Folonie:

Q. Will you read the last question or two, Mr. Blume, and the answers thereto?

(Record read as requested.)

Mr. Folonie:

Q. If the written premiums for a given period are taken as the base, to start in the middle of this equation and work in both directions, and if the earned premium basis is to be adopted, taking the period as long as five years, the unearned portion of policies written during a period anterior to the five years would all become earned during the five years we have under consideration, would it not, Mr. McGee?

A. Yes, sir.

Q. In other words, the longest term policies which are written in the ordinary course of business are five-year policies, so that whatever remained of unearned premium on December 31, 1916, would all have become earned by December 31, 1921?

A. Yes, sir.

[fol. 2753] Q. Do you see any impropriety, as a mathematical calculation of earned premiums therefor, if that is to be taken as a standard, in adding in and taking into account the portion which was unearned at December 31, 1916, and adding it to your written premiums for the period?

A. Do you mean that the entire calculation, Mr. Folonie?

Q. No, I am talking about the process of adding the unearned portion remaining December 31, 1916.

A. That would be the first step in it, yes, sir.

Q. Well, isn't it a necessary step if you are to take the earned basis?

A. Yes, sir, providing you are figuring for the earned basis, yes, sir.

The Referee: If the volume of business throughout the entire period of five years remained exactly the same, for the sake of hypothesis, that would produce an absolutely correct calculation on that theory, would it, Mr. McGee?

A. Yes, sir—there would be no——

Mr. Folonie: I am trying to demonstrate, if the court please, and Mr. McGee, that irrespective of volume of business, whether it is increasing or decreasing, that it is an exact and proper method, whether increasing or decreasing, and I am seeking to analyze it into its parts instead of taking it into gross, to demonstrate that from my viewpoint, segregating or taking the parts of the premiums which re-

main from the antecedent period, and taking the unearned portion or part of those premiums if you were seeking to adopt a basis of taking the earned premium basis you would [fol. 2754] have to take that unearned which existed when you started your given period and throw it into the—whatever equation you sought to make for the period in question, would you not, Mr. McGee?

A. Yes, sir. I think there is not a particle of difference between us, Mr. Folonie, as to the method of determining earned premiums.

Q. Well, I want to ask you some questions, Mr. McGee, to bring out my theory, which you may agree or disagree with when we get through.

A. All right.

Q. For the benefit of the referee—you and I have our ideas, and we want him to get ours, whether they are right or wrong.

Now, having passed and eliminating now from consideration of this part of the question any part of the premiums which were derived from the anterior or preceding period and confining ourselves now to the business actually done by way of premium writings during the five years in question, those premiums, those written premiums, whether ascending or descending in volume, would consist of two parts, an earned part and an unearned portion of every dollar of those written premiums, would it not?

A. That is your theory, yes, sir.

Q. Well, I mean if you were to adopt an earned premium theory—I am asking you to do that.

A. Yes, sir.

Q. And if we would take two and a half years as the average term of the insurance policies, on which I think we [fol. 2755] agreed yesterday, the earned part would be $20 at December 31st of the year during which written and 80 per cent unearned—every dollar of that written premium at December 31st of the year when written would go $20 towards earned and $80 towards unearned, would it not?

A. On that basis, yes, sir.

The Referee: You mean 20 cents?

Mr. Folonie: Yes, 20 or 80 dollars, or 20 cents and 80 cents.

Q. Now, if, therefore, during a five-year period you wrote no insurance at all during the first four years and wrote it all in the last year, and it was all of the average term of two and a half years, you would have 20 per cent of the written figures going into earned and 80 per cent going into the unearned, is that correct?

A. Yes, sir.

Q. If, however, you wrote all of your business which you wrote during the five-year period, during the first of those five years, then when you reached the end of the fifth year you would not have 80 per cent of it unearned and 20 per cent earned, but would have a quite different equation, would you not?

A. It would be a reversal of the other.

Q. In other words, that which was written during the first year would year by year have become earned, so that by the last year your unearned would be much smaller than the earned?

A. Yes, sir.

The Referee: Now, Mr. Folonie, does the time of the year within which the given item of business is written affect that situation? In other words——

[fol. 2756] Mr. Folonie (interrupting): I will bring that out.

The Referee: Very good.

Mr. Folonie:

Q. Now, on this theory which is laid down in the annual statement blank for computing earned premiums, instead of figuring all of the risks to ascertain when during the year they were written, that is average by treating the entire volume written during the year as being on the average six months old at December 31st of that year, is it not, Mr. McGee?

A. Yes, sir.

Q. So that it is treated as if it were written uniformly during the year and is treated as having all had six months elapsed, is that right?

A. Yes, sir.

Mr. Folonie: Does that answer the referee's question?

The Referee: Yes.

Mr. Folonie:

Q. And for that reason it is that a policy—that all of the one-year policies written during the year having a fifty per cent reserve, on the theory that on the average half of the time of those policies has elapsed and half is still to come, is that correct?

A. Yes, sir.

Q. In other words, they are treated as though they had all been written on July first of the given year instead of being written from day to day during the year?

A. Yes, sir.

Q. Referring now to exhibit number 1, the annual statement blank. This Exhibit 1, plaintiffs' Exhibit 1, here offered in evidence, is a form, is it not, of the so-called annual statement blank?

{fol. 2757} A. Yes, sir; what is known as the convention form of annual statement blank.

Q. And how many years has that term, with perhaps slight or comparatively immaterial changes, for how many years has that been used to your knowledge in the State of Missouri?

A. Well, with a few changes here and there, it has been used in the sense I have been with the Insurance Department, something over eleven years, and I think a good many years before that. There have been changes made from time to time in various items.

Q. One of these blanks sent out by your department to the insurance companies doing business in the state in the regular routine—when are they sent out?

A. Usually about the first to the middle of December.

Q. And they are printed under the supervision of your department and sent to the various companies doing business in the state, are they?

A. Yes, sir.

Q. And those blanks, when so sent out to the companies, are completed in the sense that the blanks in them are filled in and returned to you about when?

A. About the first of February. The Missouri law requires that they be filed January first or within thirty days thereafter.

Q. And within thirty days more or less after the first of the year these are filed, showing or purporting to show the business for the calendar year last elapsed?

A. Yes, sir.

Q. Now, on that blank, at pages 4 and 5 appear captions on page 4, "Ledger assets," and then about a third of the [fol. 2758] way down the page, "Non-ledger assets," and also third, "Deduct assets not admitted." What, in general, do those captions call for, and what information is produced under those captions?

A. Well, it shows the investments of the company, the items are clearly set forth in the blank there as to what go to make them up; shall I read them as an answer?

Q. Any way you like. I wanted the court to understand what was meant by admitted and non-admitted assets primarily, so that the court would know what the terms contemplated and what we meant when we used the terms from time to time.

A. Well, there are twelve items under the head of ledger assets, which would be the total gross assets. The first item being, "Book value of real estate," "Mortgage loans on real estate in accordance with Schedule B"—which will appear in the back part of the book. That is subdivided into first liens and other than first. The third item is, "Loans secured by pledge of bonds, stocks or other collaterals, as per Schedule C." Fourth, "Book value of bonds, stocks or other collaterals, as per Schedule C." Fourth, "Book value of bonds or stocks, per Schedule D." The fifth item is cash in company's office, and the sixth is deposits in trust companies and banks not on interest, per Schedule N. 7. "Deposits in trust companies and banks on interest, per Schedule N. 8. (a) Agents' balances representing business written subsequent to October 1, 1921." This blank is 1921, and, of course, that is the preceding year, whatever it may be. "9. (b) Agents' balances representing business written prior to October 1, 1921. 10. Bills receivable, taken for fire risks. 11. Bills receivable, taken [fol. 2759] for risks other than fire. 12. Other ledger assets, viz:" What might be termed the miscellaneous item, "Other ledger assets," and a blank space for filling in whatever those items may be.

The Referee: The first item under this heading of "Ledger Assets" calls for book value of real estate less the amount of encumbrances as per Schedule A?

A. Yes. I believe I didn't read all of that.

The Referee: Yes.

The Witness: Then the "Non-ledger assets."

Mr. Folonie:

Q. Now, what is meant by non-ledger assets as distinguished from ledger assets?

A. Well, the items themselves will distinguish that, Mr. Folonie.

Q. All right.

A. Four of the items there are 17, 18 and 19 and 20, interest due and accrued; one being on mortgages, one on bonds, one on collateral loans and then interest due and accrued on other assets, and asks that the items be given. That accrued interest, of course, would not appear in any ledger account and consequently it is a non-ledger asset.

Q. In other words, it is an asset but does not show on the books of the company?

A. Not on the ledgers, no, sir.

Q. It is a calculated figure as distinguished from a book figure?

A. Yes, sir. And line 23 is rent due and accrued on company's property or lease. Line 25 would be a "Market value of real estate over book value as per Schedule A." Line 26, "Market value of real estate—market value (not including interest in item 18) of bonds and stocks over [fol. 2760] book value, per Schedule D."

Line 27, "Other non-ledger assets" of whatever nature they may be.

Q. Does that complete the admitted assets now?

A. That gives you the gross asset—the sum of the ledger and non-ledger assets of the company.

Then there are certain items to be deducted from that to arrive at the net assets. That is, "assets not admitted."

Q. Well, what are those?

A. The first item of that on line 31 is, "Company's stock owned, and losses on." I suppose that means losses on the company's stock.

Q. That means the stock of the company making the return—it is not stock—capital stock?

A. Yes, or loans secured by that stock.

Q. Yes.

A. Line 32, "Supplies, printed matter and stationery." Line 33, "Furniture, fixtures and safes." Line 34, "Agents balances representing business written prior to October 1st, 1921," but that is of the preceding year, whatever it may be.

Q. In other words, agency balances more than 90 days old are deducted then from assets?

A. Yes, sir.

Q. All right, go ahead.

A. Line 35, "Bills receivable, past due, taken for premiums." Line 36, "Excess of bills receivable, not past due, taken for risks over the unearned premiums thereon.

"37. Loans on personal security, endorsed or not.

"38. Overdue and accrued interest on bonds in default. [fol. 2761] "39. Book value of real estate over market value, per Schedule A.

"40. Book value of bonds and stocks over market value, per Schedule D.

"41. Book value of other ledger assets over market value, viz:" with a blank space for filling in whatever those items may be.

Q. Now, by making these deductions of non-admitted assets if a company undertook to do a credit business by extending credit to person securing insurance, agents and those agency balances extended over 90 days, those assets which the company might have which might be good in fact would be eliminated from their assets as though they did not exist, for the purpose of this statement, would they?

A. Yes, sir.

Q. And if they saw fit to take personal notes or buy any stock of their own company, those would be eliminated, too, from their assets?

A. Yes, sir.

Q. Now, on the liability side opposite—on page 5—by the way, does page 4 relate to the company as a whole, assuming it to do business over the United States, or does it just relate to Missouri alone?

A. This is the entire business in the United States.

Q. That is without separation as to states?

A. Yes, sir.

Q. Now, what are the liabilities that are required to be listed as offsetting those assets on the following page, namely, page 5?

A. First, of course, would come losses, and those losses [fol. 2762] are subdivided under the various classes, "Fire, marine," etc. Then following the losses, which takes up 14 lines of the statement, on line 15 comes "Estimated expenses of investigation and adjustment of losses," subdivided into two items, paid losses and unpaid losses.

Line 16, "Gross premiums (less reinsurance) received and receivable upon all unexpired risks, other than fire risks, effective on and after January 1, 1921 $—; unearned premiums thereon, per recapitulation, page 7, item 31, column 7."

Q. If I may interrupt as you take these items to call attention to them one at a time—is that reinsurance deductible reinsurance in companies authorized to do business in the State of Missouri or is that all reinsurance?

A. This is the total of reinsurance.

The Referee: Read the answer please, Mr. Blume.

(Answer read by the reporter.)

The Witness: I didn't finish reading that item, however. There is a blank there for the amount of premiums in dollars. Then goes on as follows: "Unearned premiums thereon, per recapitulation page 7, item 18, column 6."

Line 17, "Gross premiums (less reinsurance) received and receivable upon all unexpired risks, other than fire risks, effective on and after January 1st, 1921, $—."

Unearned premiums thereon, per recapitulation, page 7, item 31, column 7.

[fol. 2763] Line 18, "Gross premiums (less reinsurance) received and receivable upon all unexpired risks effective prior to January 1, 1921, $—, unearned premiums thereon, per recapitulation, page 7, item 51, column 6."

"19. Total unearned premiums as computed above."

"20. Amount reclaimable by the insured on perpetual fire insurance policies, being — per cent of the premium or deposit received."

Line 21 is net——

Q. (Interrupting.) From your experience, those perpetual policies are comparatively small and negligible in quantity, are they not?

A. Very small, some companies having none at all.

Q. Yes?

A. Line 21, "Net premium reserve and all other liabilities, except capital, under the life insurance or any other special department."

Line 22, "Unused balances of bills and notes included in admitted assets, taken in advance of premiums on open marine and inland policies or otherwise, returnable on settlement not included in items 16, 17 and 18 above."

Line 23, "Principal unpaid on scrip or certificates of profits authorized or ordered to be redeemed."

Line 24, "Interest due or accrued, including $— on borrowed money."

Line 25, "Dividends declared and unpaid to stockholders, $— to policy holders, $—."

Line 26, "Salaries, rents, expenses, bills, accounts, fees, etc., due or accrued."

[fol. 2764] Line 27, "Estimated amount hereafter payable for federal, state and other taxes based upon the business of the year of this statement."

Line 28, "Contingent commissions or other charges due or accrued."

Line 29, "Funds held under reinsurance treaties."

Line 30, "Due and to become due for borrowed money."

Line 31, "All other liabilities, viz.:"

Now, we have here in heavy type about three-fourths of the way down the page——

Q. (Interrupting.) "Total amount of all liabilities, except capital," do you not?

A. Yes, sir.

Q. Which sums up the items down to and including line 33, that being line 34?

A. Yes, sir.

Q. Now, to revert back to the previous pages, pages 2 and 3, without attempting to go into any detail in those, on page 2 appears first, "Statement of the capital stock" and as the second grand division on that page, "National income of the company from all sources," is that correct?

A. Yes, sir.

Q. And on the opposite page, page 3, appear, "Disbursements"—under the heavy caption, "Disbursements," and they are in 42 lines calling for various information in detail over the general national disbursements of the company?

A. Yes, sir.

Q. Now, on page 6, what is your caption on that page?

A. "Risks and premiums on all business effective on and after January 1, 1921," on this particular blank.

[fol. 2765] Q. On that page appear 49 lines, do they not?

A. Yes, sir.

Q. And calls for the risks and gross premiums upon the various classes for example in the first group, "Fire," the second, "Ocean and marine," and so on in the various groups?

A. Yes, sir.

Q. And on page 7 appear the "recapitulation of fire risks and premiums on all business effective on and after January 1, 1921, and on perpetual risks whenever written"?

A. Yes, sir.

Q. Does that show the years in which the insurance was written?

A. Yes, sir.

Q. In other words, we have there a recapitulation respecting fire risks of the year during which all taxes—all risks then effective were written?

A. Yes, sir.

Q. Going back how many years?

A. Going back for the five-year period so as to cover the five-year term business written.

Q. Yes. Now, what are the other grand divisions on the page besides the one I have called attention to?

A. Well, the next one is, "Recapitulation of gross premiums on all unexpired risks, other than fire risks, effective on and after January 1st, 1921."

The next subdivision is, "Risks and premiums on all business effective prior to January 1st, 1921," and the next, "Recapitulation of risks and premiums on all business effective prior to January 1st, 1921."

Q. Do these tables as appearing on those pages enable you to determine the amount which is earned and the amount unearned from time to time and what will become

[fol. 2766] earned during the forthcoming period if you care to calculate it?

A. Yes, sir; these give us the unearned premium reserve which is necessary to the calculation.

Q. And on page 8 appears a caption of, "General interrogatories," designed to bring out the condition of the company generally as to its business and the character and nature of its general assets, does it not?

A. Yes, sir.

Q. And when you reach page 9, you there have the business in the State of Missouri segregated as distinguished from the business nationally done by the company which appeared on the previous pages, is that correct?

A. Yes, sir.

Q. And your caption is "Business in the state of Missouri during 1921"?

The Referee: On the same general plan as the preceding?

A. How?

The Referee: On the same general plan, I say, as the preceding?

A. Yes, sir; Missouri business, Judge, shows the premiums received and losses paid in the State of Missouri only.

Mr. Folonie:

Q. May I suggest a correction on that? Doesn't it also show, "Risks written"?

A. Yes.

Q. Now, under "Risks written," which is the first of subdivisions on that part, appears the business in different classes, such as fire, ocean marine, etc., with ten kinds itemized, and item 11 and item 12 to write in special classes not enumerated?

A. Yes.

[fol. 2767] Q. And then as to each of those appears spaces to put in the gross risks written, risks canceled, reinsurance in companies authorized to do business, total deductions, and then, "Net risks written, column 2, minus column 5"?

A. Yes.

Q. And then you have the corresponding subdivisions respecting premiums, have you not?

A. Yes, sir.

Q. Shown class by class?

A. Yes, sir.

Q. And then "Losses paid and incurred," class by class?

A. Yes.

Q. Now, at pages 10 and 11, taking page 10 first, there appears what is described in the caption as underwriting and investment exhibit, showing the sources of the increase and decrease in surplus during 1921, does it not?

A. Yes, sir.

Q. Now, in that underwriting exhibit, so styled, in the sub-caption appear what grand subdivisions under "Underwriting exhibit."

A. Well, first is "Premiums;" the next is "Underwriting profit and loss items," and the next is "Losses," and the next is "Underwriting expenses."

Q. Now, as far as the underwriting exhibit is concerned, are the premiums shown on a paid basis or on an incurred basis or both?

A. Premiums are "Earned premiums."

Q. Yes. And so far as the losses are concerned, will you give us the divisions of those?

A. I don't just exactly understand you.

[fol. 2768] Q. The items under that?

A. Well, that is just the method of calculating incurred losses, winding up that incurred loss, the figure used in this exhibit.

Q. The totaling figure under "Premiums" being the last line under that subdivision, and reads, line 5, "Premiums earned during 1921," does it not?

A. Yes, sir.

Q. And under "Losses," the last item under that, summing up that subdivision, line 22, reads, "Losses incurred during 1921," does it not?

A. Yes, sir.

Q. And underwriting expenses, the last item under that, summing up the whole subdivision, reads, line 27, "Underwriting expenses incurred during 1921," does it not?

A. Yes, sir.

Q. Are you familiar with the fact, Mr. McGee, from your general knowledge of your business that this form of return on the basis of earned premiums, incurred losses and incurred expenses was produced by a conference be-

tween insurance commissioners of the various states and representatives of the companies?

A. Yes, sir; it is an agreed method of showing that.

Q. Do you know that it is in use—that method of calculation of the underwriting experience of the companies is in use in all the various states of the Union?

A. It is uniform over the United States, yes, sir; so far as I know.

Q. Do you believe that the condition of the solvency of a company doing business in the State of Missouri would be properly shown to you if you had charge of the matter in your department so as to reasonably enable or permit [fol. 2769] you to gauge of its solvent or insolvent state, if paid losses only were reported to you and you had no knowledge of losses incurred and unpaid?

A. It would not be as exact a showing of the liabilities of the company if the incurred losses were not reported; no, sir.

Q. If a company such as the Traders Insurance Company which became insolvent by virtue of the conflagration at San Francisco, should make a report on December 31st of that year of its paid losses only and did not put its unpaid but incurred losses into its statement, a company which but for such conflagration would be solvent would still be shown solvent on such a statement, would it not?

A. Yes, sir.

Q. And the fact might be if such a return were made on such basis, that the company making the return was in fact insolvent and unable to pay its debts?

A. Correct.

Q. Do you recognize the propriety of the incurred system as a proper method of demonstration of the solvent condition of the company and its ability to meet its obligations?

A. Yes, sir.

Q. In your judgment is the situation as to expenses, whether upon a paid or on an incurred basis logically the same as respecting losses or is it different?

A. Just the same.

Q. Do you believe that the actual conditions of a company, whether solvent or insolvent are correctly shown if its premiums which it has in fact collected and received were all to be reported to you, as they were in fact written,

without making any reserve or allowance for the period or [fol. 2770] term during which those policies were to run?

A. Depends on what you are trying to arrive at.

Q. I am directing your attention to solvency at this time?

The Referee: Read the question please, Mr. Blume.

(Question read by the reporter.)

The Witness: Just a minute now and let me see if I can get that so I can make it clearer just what I do think about it. From the fact that whatever reserve you set up on those policies is merely a portion of the premium written, I fail to see that it affects the solvency one way or the other, whether you call that total amount "Premiums written" or call a portion of it "Unearned." It seems to me to be rather a distinction without a difference.

Mr. Folonie:

Q. Well, let me put it this way, to clarify my views comparatively with yours: suppose you had two companies which wrote an absolutely identical amount of business during the year, so far as their written premiums were concerned.

A. Yes.

Q. And one of those companies wrote one year's business entirely?

A. Yes, sir.

Q. And the other company wrote five year business exclusively?

A. All right.

Q. And suppose that the company—that the amount of the assets on hand of each company above its paid losses and expenses were identical, would you say that the com- [fol. 2771] pany with the five-year policies on its books would be in as good a financial condition and ability to meet its responsibilities as the one that had only one-year policies on its books?

A. I would.

Q. Do you have in contemplation that the five-year policies are written at a premium rate or a total amount derived less than those written for one year, proportionately?

A. Yes, sir, and I also have in mind the fact that if that one-year policy were made to cover the same space of time it would incur the full agent's commission for the five years; while the other does not get the same larger difference in the expense of handling. There would be an additional clerical work on the one-year policy, and as a matter of fact the difference in the premium is only presumed to make up for the lack of expense in handling the business.

Q. Do you think those items are virtually offsetting?

A. I doubt whether they do entirely or not, but I think there will not be a very material difference.

Q. Do you think that the policies written upon five-year terms in general upon like risks are productive of the same return to the insuring company as those written upon the one-year term?

The Referee: Proportionately?

Mr. Folonie: Proportionately.

A. I think so, yes, sir.

Mr. Folonie:

Q. In other words, you think that the deduction for the expense is so equitable that considering the expense to the company of writing the one-year policy over five times as compared with writing it once for five years, that the re- [fol. 2772] duction in the premium to the policyholder puts the two fairly on the same basis?

A. Fairly, yes. I don't say that they would exactly balance, but approximately.

Q. No, I understand, but reasonably so?

A. Yes, that would be my judgment on it.

Q. Now, at page 11 of this statement appears "Investment exhibit" (referring to annual statement) where appear, "Interest and rents," "Profit on Investments," "Losses on investments," "Investment expenses," "Dividends"—those are the general subdivisions, are they not, of that subject-matter?

A. Yes, sir—well, that "Dividends" is an item below the "Investment Expense," sir.

Q. Yes, as a separate bit of information?

A. Yes; not included in it, but it is an item as reducing surplus.

Q. Yes. Now, I note that there appears under, "Investment expenses" a notation, "Include in this item one-eighth of one per cent of the mean invested assets; repairs, expenses and taxes on real estate; such other taxes and fees as apply to investments and personal property only; and such other items, if any, as are known to apply exclusively to the assets of the company." Have you ever made any investigation to ascertain what relation that one-eighth of one per cent of premium invested assets has to earned premium figures?

A. No.

Q. That one-eighth of one per cent of mean invested assets as an investment expense is a more or less arbitrary figure, is it now?

A. Absolutely arbitrary.

Q. In other words, what the investment expenses in fact [fol. 2773] are is a matter difficult of determination and this method has been adopted to arrive at the basis—correct?

A. Yes, sir.

The Referee:

Q. By whom was this method adopted?

A. I am not sure that I can say, Your Honor, but I would suppose it was agreed on between the commissioners and the companies—but I have no knowledge as to that; just a supposition.

Mr. Folonie:

Q. Now, these pages 10 and 11, underwriting exhibit and the investment exhibit, when completed according to the requirements of your blank, show separately the underwriting activity of the company for the year and separately the investment activity of the company for the year, do they not?

A. Yes, sir.

Q. So that if the company during a given year upon the basis here adopted has made or lost money on its underwriting, and whether it has made or lost money on its investments, are separately shown?

A. Yes, sir.

Q. And then if a gain or a profit is shown on both, you can add them together and get the total profits, or if there is a gain and a profit or loss on one, you can take the difference and ascertain the profit or loss from the entire operation?

A. Yes, sir.

Q. At page 12 appear, "Requirement as to deposits of the companies." In general, those deposits are made in what place or location with reference to the home office of the company?

A. They are made in the state of incorporation of the company, which is usually the home office of the company.

[fol. 2774] Q. And then reported in all the various states in which they do business?

A. Yes. There is an occasional special deposit so termed which may be required under the statutes of some particular state to be made in that state if they do business there.

Q. Well, there are several of the Southern States, I think Georgia or Mississippi—down in there, that require deposits in that state specifically for companies doing business?

A. Yes, sir.

Q. But in general it means only a deposit in the home office of the company?

A. Yes, sir; and in the home state.

Q. And that is designed to insure solvency of the company by having certain statutory form of securities deposited with the state so as to prevent fraudulent statements by any company of its assets which it might in fact not have, is that the general intent of it?

A. I don't see that it would have anything to do with preventing them from making fraudulent statements, but it is a measure of safety.

Q. Well, at least to the extent that they have deposits on hand they would have at least that much assets on hand some place?

A. They would have at least that much check, I think, yes, sir, absolutely.

Q. Attached to schedule A, part 1, is a caption, "Showing all real estate owned December 31st 1921, the cost, book and market value thereof, the nature and amount of all liens and encumbrances thereon, including interest due and ac-

crued, etc." Is that information reported to you from year to year by these companies?

[fol. 2775] A. Those schedules are filled out, yes, sir. There are a number of them. I am not altogether familiar with them because I don't pay much attention to them.

Q. Just to know whether they are filled in—these schedules. Schedule A, part 2, "Real estate acquired during 1921; Schedule A, part 3, real estate sold during the year" and the profits and losses made upon those real estate transactions within the periods that these reports cover would enable you to check back and find out whether they had made a profit or suffered a loss on the transactions as reported, would it not?

A. Yes, if we had force enough to make that kind of an itemized check.

Q. Passing over to Schedule D, and omitting any mention of the intermediate schedules, Schedule D, number 1, showing, "All bonds owned by the company," and Schedule D, showing, "All stocks owned by the company," with the interest rate and the year of maturity and the book value, the par value and the interest, and like information, do those come filled out to you from year to year by these companies?

A. Yes, sir.

Q. And you are enabled thus to ascertain not only the character of the investments of the companies, but the amount of the return they received from them in gross upon each particular security, is that a fact?

A. Yes, that would be possible to do that from that schedule.

Q. I mean the information is there if you wish to avail yourself of it and have nothing else to do?

A. Yes, and live long enough.

[fol. 2776] Q. Yes. Now, Mr. McGee, you stated in substance on your direct examination that you had no check respecting the unearned premiums of these companies at the beginning of the five-year period. You have in your annual statements of the companies from——

A. (Interrupting.) Pardon me. Just repeat that statement.

Q. My note, as I have it of your direct evidence was that you had no check of the unearned premiums at the begin-

ning of this five-year period but had to accept them as given by us—that is as I understood you?

A. I don't believe I made that statement as to unearned premiums.

Q. Well, I so have my note, but you can state now what the fact is about it. Did you mean to be so understood?

A. My impression is that that statement was made in regard to premiums generally and not as to earned premiums.

Mr. Barker: That is right.

A. (Continuing:) That is my recollection at the present time now.

Mr. Folonie:

Q. Well, I will ask you now as a fact whether the unearned premium figure as it existed at the beginning of the five-year period we have here in suit were reasonably capable of check by you?

A. Why, as much so as any of the balance of them with the exception of two or three companies there, who failed to give their unearned premiums.

Q. I think you mentioned those specifically. We will consider those accepted from any answer you make.

A. Aside from those, the 1916 premiums were as susceptible of check as any of the other years, and if I have [fol. 2777] made the other statement, I made it inadvertently, not understanding what you meant.

Q. All right. Now, as to those companies which you mentioned as not showing their unearned premiums as of December 31, 1916, have you any notation there of which companies those are?

A. No, not without running through that pile of papers that I had there.

Q. Are you able to say at this time that all of the companies that your mention were doing business in the State of Missouri during the year 1916?

A. Not being able to recall exactly what those companies were, I couldn't say, but my impression is that they were, Mr. Folonie. One, I think, was the Assurance Company of America, wasn't it? I am sure it was, and my impression is that the other companies were in during all the five years.

Q. Yes, during the five years, but my question is whether

you know whether they were here during any preceding period.

A. Well, I can't be sure about that without looking them up, but my impression is that they were.

Q. Well, if you have any means of verifying the fact from your papers there, I would like to have you do it.

A. Let me see what those companies were. (Examining papers.) Have you a memorandum there as to which I said the companies were?

Q. The Assurance Company of America was one.

A. I think there were only about three, possibly four of them.

[fol. 2778] Q. Well, take that one first. Were they in the State of Missouri prior to the year 1917?

A. I am sure that they were, Mr. Folonie. Now, of course, I have to take my memory on those, not having any of the Department records here.

Q. In other words, do I correctly construe your answer that your observation is that they were here prior to that, but you are not able to assert it as an absolute fact, not having the record here—does that fairly state your answer?

A. Yes, sir, that is about what I mean; a little fuller than I stated it.

Q. The Marquette Fire & Marine or the Marquette whatever the latter part of it is.

A. The Marquette National Fire. I won't be positive about that one, Mr. Folonie.

Q. They were organized in 1916, if my recollection serves me right.

A. About that time. They came into Missouri pretty shortly after their organization, and my impression is that they were in in '16, but I won't be positive about that now. But, as you say, they were organized along about that time.

Q. Yes. Well, now, if they were organized in the year 1916 and entered in the State of Missouri in 1917, or the very last part of 1916, would their unearned premium for 1916 be any material factor here anyway?

A. Oh, if those whole three companies were dropped out, they are not large enough to make any very serious difference in the results.

[fol. 2779] Q. Yes.

A. The Century was another one.

Q. The Century was another, yes. Do you know whether they were in the state in 1916 or not?

A. I think they were, Mr. Folonie. I think they came along in about '14 or '15, if I remember correctly. I believe now that was the only three that I called your attention to, wasn't it?

Q. That is all that I find in my notes scanning them now.

A. There might be another one or two of them.

Q. I don't have any note of it, but I have an indistinct recollection that you mentioned the Dubuque Fire and Marine in that connection, but I may be mistaken because I don't find any note on it.

A. I don't think they are, because the only memorandum I have here on the Dubuque Fire and Marine is the difference in premiums—made on a yellow sheet of my own. But I haven't your reserve sheet with me.

Q. Now, I have a note that you stated on your direct examination in substance that the unearned premium fund was accumulated after the payment of all losses and expenses and that therefore the sum was substantially a profit to the company. Does that state your view with correctness?

A. Yes, sir.

Q. Now, on the business which is written by the company during the year 1921, or the years 1917 to 1921, inclusive, and taking the unearned premium fund, so called, remaining at December 31st of 1921, if the company at that date ceased entirely the business and should cancel all of its outstanding business, it would have to pay every cent of that [fol. 2780] unearned premium amount back to policy holders, would it not?

A. Yes, sir.

Q. And that despite the fact that the expense of acquiring that business by way of agent's commissions, and so forth, had been paid by the company from some of its assets in some form?

A. Yes, sir.

Q. Yes, they would, nevertheless, have to pay the full amount of the ratable premium to the policyholder, including the money they had advanced for acquisition of it?

A. No, they would not pay that. They would pay prorata and they would not pay back the part they had paid for acquisition.

Q. Now, if a company, for example, had a five-year policy which at December 31st had run one year, they would have to pay back four-fifths of that, would they not, if they canceled it December 31st, 1921?

A. Yes, sir.

Q. If it had run just exactly a year at that time?

A. Yes.

Q. So that a hundred dollar premium which the company had received in gross, it would have to pay back $80 to the policyholder, is that correct?

A. Yes, sir.

Q. Now, if upon the business of the company their expense ratio to their premiums was 44 per cent, how much of that $100, if they had no losses at all, how much of that $100 would they have expended by way of expense before seeking to make reimbursement to the policyholder?

A. About 40 per cent, according to your figure.

[fol. 2781] Q. Forty per cent of what?

A. Forty per cent of the $100.

Q. So that if they had no losses at all out of that policyholder's $100, they would have spent about $40 and they would have to pay back to him $80, is that right?

A. That seems to be good arithmetic.

Q. Yes. Now, if the company continues to carry that policy to maturity instead of canceling it at December 31st, 1921, if their loss ratio is 60 per cent more or less, what would be the anticipated amount of losses upon the $80 of the policyholder which it would have to carry on to maturity?

A. You are estimating it at 60 per cent?

Q. I am assuming a loss ratio on the company's business in general of 60 per cent. They would anticipate losses of 60 per cent of that $80 that they had up in the reserve, wouldn't they?

A. Yes.

Q. And no companies with any considerable volume of business can anticipate as a reasonable proposition that they will carry the risks which they carry on their books to maturity if they have a considerable — to run, having some losses, can they?

A. Hardly. Mr. Folonie, just a moment. You are figuring and making your estimates there on an entirely different proposition from the one involved in this—in calcula-

tion we have here. You are figuring on companies quitting business and winding up their affairs but——

Q. (Interrupting.) No, I took that first. Now, I am going into a company that continues business.

A. All right.

[fol. 2782] Q. Now, a company that continues business, it is going to have losses to pay upon the risks upon its books if it has any considerable volume will it not?

A. Undoubtedly.

Q. Now, do you think that after a policy has run half of its life and the company has paid the cost of acquiring that particular business, by way of agency commissions, and if they are going to have losses in the future while that policy is in force, wouldn't you anticipate that they will have some expense in the adjustment of that loss and in settling it and perhaps in litigation in connection with it?

A. Oh, there is a chance for all of that, yes.

Q. Well, you know that the adjustment expense of these companies is quite a material sum, don't you?

A. Rather light as compared to many other items.

Q. Yes, relatively, but in dollars and cents it is quite an amount, isn't it?

A. Several dollars, yes, for the $50 companies.

Q. I suppose we are to consider your answer as levity, are we not? You don't mean it literally, do you?

A. What was my answer?

Q. Your answer was it would be several dollars for all these companies?

A. Well, that is about the way you put the question.

Q. Do you mean your answer literally?

A. You can take it however you please.

Q. In the conduct of the business and carrying it to its maturity, would you anticipate that the companies would have any taxes to pay as they continued on with their busi-
[fol. 2783] ness?

A. Not on that part of it, necessarily. They paid it once—excuse me, let me modify that. I had in mind premium tax only.

Q. The premium tax would be paid, but other taxes would be still to come?

A. I don't know what other taxes would apply to it; there probably would be some that would.

Q. If they continued the conduct of their business they would have that character of expense still to come respecting bureaus such as fire prevention bureaus, inspection bureaus and that character of expense, would they not?

A. Just a moment. Do you consider that the expense of the current year is chargeable against those unearned premiums of the past years?

Q. I don't use the term of unearned premiums of years past, because as I construe it those unearned premiums relate to the period during which they are becoming earned or are to become earned.

A. Well, whatever you call them, they are moneys derived from the premium of the last year—of the previous years, as what you are talking about as being liable for the tax of the past year, is that right?

Q. I have passed by taxes. I am now inquiring about fire prevention bureaus, inspection bureaus and audit bureaus now.

A. I am just trying to clear up what you are driving at.

Q. I am driving at that your expenses keep right on and you can't stop them while you do business.

A. Do you think those expenses of this current year for such items as that are taxable against what you term this [fol. 2784] unearned premium reserve that you are carrying? That is what I am trying to get at.

Q. Well, that is the way you stated. I would rather put it in the form of interrogations, if you don't mind?

A. Well, I was trying, Mr. Folonie to straighten out your interrogation in my mind.

Q. Then you—whatever you are going to charge it against, you recognize the fact, do you not, that after you acquire the business your expense is not complete after you have once got the business, is it?

A. Not altogether, no.

Q. Now, if you write policies during this current year and pay in advance the agent's commissions on them, you can anticipate that whether you do business or if you quit business, that during the next ensuing year you are going to have, if you don't cancel your policies, you will have such expense as adjustment expense, and things of that kind will continue in spite of our stopping the writing of business, will they not?

A. Yes, sir.

Q. And you recognize the fact that such activities as fire prevention, upon the assumption that they are a warrantable activity to reduce fire waste, will continue if the company has risks on its books, whether it is writing any new insurance or not, don't you?

A. In my opinion, if the company ceased writing business, it would cease paying those charges.

Q. You think that they would not be interested in the prevention of fires to the property they had insured if they quit writing new business even though they had unexpired business on their books?

[fol. 2785] A. I don't think that you will find that they do that. That is what I mean; that they drop out of the associations when they drop out of business.

Q. Now, if the company is carrying out its obligations to its policyholders, as distinguished from canceling them—we have covered the cancellation and I am eliminating that now from consideration—if the company is continuing to carry its risks to maturity it is going to require some one to supervise the business of the company at its main office, if it has any volume of business, is it not?

A. Certainly.

Q. And it is going to require clerical help, is it not?

A. Yes, sir.

Q. It will require field help by way of adjusters and similar classes of service?

A. Yes, it will take more or less.

Q. In a going company which is continuing the writing of new business, as distinguished from one which ceased the writing of new business, and going on from year to year it has—if it is active is constantly engaged in acquiring new business, is it not?

A. Yes, sir.

Q. It is also engaged in caring for that business which it has acquired during previous periods, is it not?

A. Yes, sir.

Q. Now, when you told the court that you had from some calculatons of some kind of a profit on a theory you mentioned which would show a profit of $9,992,508, will you permit me to see the sheet on which you have the calculation reaching that conclusion?

[fol. 2786] The Referee: We will take a five-minute recess here, gentlemen.

(Which was accordingly done.)
(Counsel examines documents.)

Mr. Folonie:

Q. Mr. McGee, I am taking the figures on which you have purported to reach $9,992,508 profit, and I would like to have you take a pencil and paper and make a comparatively simple calculation for me on this hypothesis: If the unearned premium——

Mr. Barker (interrupting): Wait a minute. Let him get a piece of paper.

Mr. Folonie:

Q. (Continuing:) —if the unearned premium at the beginning of a given term is $16,737,789, and the written premiums during the period are $21,895,057, and the unearned at the end is $12,628,009, what is the figure?

A. That is 16 as the beginning?

Q. 21 is the written and 12 at the end.

A. $26,004,837.

Q. Now, I will ask you to compute the earned premium for that same figure without any information of what the unearned was at the beginning of that period; just take the written premium and the unearned at the end and tell me what the earned is. Probably I would be fairer with you by asking you whether such a computation can be made if you just simply have the written figure and the earned at the end without the unearned at the beginning. Can you make any calculation of the earned premium for the period?

A. Not unless it happened to be for a company who had just begun business.

Q. Yes, well, I mean one that had been in business before.

A. Well, you couldn't.

[fol. 2787] Q. Well, I didn't mean to trick you with a question.

A. You were not tricking me much.

Q. Now, from these figures you have here, wherein you have purported to reverse the unearned premiums year by year and the written premiums year by year and the unearned at the end, I notice you haven't any unearned premium as of December 31, 1916 in your computation where

you reach the $9,000,000 conclusion. How can you figure the unearned premium for the five years when you don't have the unearned at December 31, 1916?

A. I didn't figure them. I took your figures as they were and reversed them, that is all. I have made no calculation of it.

Q. Now, don't you know that that written premium of seventeen million—I am reading off of this—of seventeen million unearned at December 31, 1917, and a written premium of nineteen million dollars during that year—strike that out. I tangled myself there.

Now, without your unearned premium figure at December 31, 1916, either assumed to be as we had it or a corrected unearned premium figure, can you make a computation for those five years without having that initial unearned premium figure?

A. Didn't you have it in making this one here?

Q. We had the figures for December 31, 1916, too.

A. I am assuming you did, and, as I say, I took your figures.

Q. I understood you haven't taken our figures and I am asking you if in your calculation you have used the unearned premium as of December 31, 1916, in your [fol. 2788] calculation at all?

A. I am telling you that I did not make any calculation; that I used your figures as you had them and reversed them and that is all I did. That is your calculation.

The Referee: Q. Do you know whether or not, Mr. McGee, the figures which you say where furnished by the insurance companies included, in making these calculations, the unearned premiums as of date December 31st, 1916?

A. They put them in here as of the individual companies and necessarily they make it for the individual companies on that basis and it would carry into the recapitulation.

The Referee: Q. Is your calculation the one now under inquiry based on the assumption that it does include the unearned premiums as of date December 31st, 1916?

A. Yes, sir.

The Referee: Q. Do you know whether, in point of fact, those figures do include those premiums or not?

A. As shown in their figures in their exhibits here, they do.

Mr. Folonie:

Q. Now, Mr. McGee, if you had a business—an unearned premium at the beginning of your term of seventeen million dollars, as your hypothesis is assuming, and a written premium of nineteen million dollars during that year, and your unearned premium at the end of that year were assumed to be only sixteen million dollars, don't you know that the unearned part of that nineteen million dollars written premium would accumulate into the following year so that on a written business of twenty-one million dollars in [fol. 2789] 1918, as you assume in your hypothesis, with a written business of nineteen million dollars the year before, there couldn't possibly be an unearned premium of only twelve million dollars at the end of that year?

A. I think that is probably correct.

Q. In other words, to reverse these figures shows an unearned premium at the end of each of those years which could not possibly exist with the unearned you have at the beginning on your hypothesis, and the written figure you have during that year, isn't that so?

A. I make no pretense that that is absolutely correct.

Q. Well, that is not even approximately correct is it?

A. Yes, sir.

Q. Now, I will ask you about what percentage of the—or what relation the unearned premium figure bears to the written premiums. Does it have any relation at all?

A. I don't know that I understand just exactly what you mean, Mr. Folonie.

Q. I mean as the premium volume increases, and not ratios now, but volume—as the volume of written premiums increases and becomes larger, does the volume of the unearned premium also increase and become larger?

A. Yes, sir.

Q. Now with a business as you assume here of nineteen million dollars of written premiums in 1917, with an unearned premium of seventeen million carried forward and becoming in part earned during that year, and the business jumping next year from nineteen million to twenty-one mil- [fol. 2790] lion, is it conceivable to you that your unearned as you have it at the end of that year could conceivably be a larger one?

A. As to that particular year it is not.

Q. No.

A. Wait a minute, wait a minute. Well, all right, go ahead, he will get to it directly.

The Referee: Do you wish to modify your answer or say anything further, Mr. McGee?

The Witness: I just wanted to say that that answer held only as to that one year. That the other decrease shown there would be approximately correct and that I am not claiming that that is correct calculation at all. It was intended merely to illustrate the effect if it were a decreasing volume of business from year to year instead of an increasing one as shown in the illustration above it.

Mr. Folonie:

Q. But your reserve—your unearned figure would not consistently decrease year by year as you have assumed it in your calculation of this nine million dollar figure where the volume of the written premiums shifted from year to year as you have supposed here, would it?

A. They would be approximately correct, except as to that one year, Mr. Folonie: I think you can see that without any trouble if you look at it.

Q. No, I don't see it at all.

A. Well, you can if you look at it because they run in proportion to the premium.

Q. Now, to calculate the earned premium for a given period—to calculate the earned premium for a given period, [fol. 2791] the proper method is to take the unearned at the beginning, add to it the written figures for the given period, and deduct the unearned at the end, is it not?

A. Yes, sir.

Q. Now, I have made a rough pencil calculation on your own figures. At the beginning your unearned at the beginning of those five years, according to your tabulation, is seventeen million dollars, is it not, Mr. McGee?

A. Yes, sir; $17,061,209.

Q. Now, if you add to that your written premiums during that period of $83,502,181, it makes $100,563,390, does it not?

A. I don't know, I haven't it in that form.

Q. Well, I have added it here just now for you—you can check it to see if it is correct?

A. Yes.

Q. Is that right?

A. It seems to be correct.

Q. Now, if you deducted from that your unearned premium at the end of the period, $13,062,865, it leaves $87,500,525 as the earned premium, does it not?

A. I haven't any thirteen million as unearned premium reserve at all.

Q. Isn't your figure——

A. (Interrupting.) That is earned premium, Mr. Folonie.

Q. Oh, that is supposed to be earned premium, is it? Well, all right.

A. The figure you subtracted there is unearned premium reserve, which is eight million dollars plus. That makes some difference.

Q. Now, what your unearned figure would be at the beginning of your period would depend upon what your business was in fact before the period, would it not?

A. Yes, sir.

[fol. 2792] Q. Now, on what theory did you change, in making your hypothesis, the unearned premium and the figure with which we started this period, of $8,372,804 to $17,061,209, if you were going to calculate only the experience during this period, assuming the reversal of the business done during it?

A. Assume there was business preceding it that would produce your reserve. That is all there is to it. What the amount would be does not affect the question—or what it runs.

Q. You don't think it affects the question? Is that what you said?

A. I said I assume the condition of business prevailed before that time which would produce that reserve.

Q. In other words, it is not a re-calculation of this five-year period at all, but you go further and assume that before this five-year period commenced, instead of having done a business which would have a reserve when you start the period of eight million, that in fact they had done a larger business in a preceding period which would give an unearned premium of seventeen million, is that it?

A. Exactly.

The Referee: What is the answer?

A. Yes, sir.

Mr. Folonie: So that, in other words, your whole nine million dollars which you reach as a conclusion here is not because of any change in the five-year period at all but is on an assumption of a different situation or state of facts during the preceding time?

A. Yes, sir; yes, sir.

Mr. Folonie:

Q. And if, then, you assume that we start at the begin-
[fol. 2793] ning of this five years with the same figure of $8,372,804 as our unearned premium balance with which we start our equation, then by reversing all the remaining figures and substituting that eight million dollars for the seventeen million dollars you have used here, you lop off nine million dollars of your $9,000,000, don't you?

A. That is exactly what it does. That is what I was trying to show you. Mr. Folonie, in making a hypothetical question, or an illustration, it is very common to assume your basis that you start from, is it not? There isn't any other way to make it, in fact.

Q. Well, I undertook, Mr. McGee, to show you that your supposed nine million dollar profit was not derived during the five years at all but was derived during a previous period with which our lawsuit has nothing to do. That is as far as I care to go with it.

A. Well, what I am trying to show you is——

Q. (Interrupting.) If we made nine million dollars the period before, it didn't make much difference.

The Referee: Read the last answer, Mr. Blume.

(Question and answer read by the reporter.)

The Witness: Well, your seven million loss, then, was made in the five years previous instead of the five years under consideration.

The Referee: Just a moment, if I may.

Q. Mr. McGee, if you assume a figure representing the unearned premiums as of December 31, 1916, as the same as were assumed by the companies in showing the unearned premiums for the same time, that is, December 31,
[fol. 2794] 1916, and then reverse the premiums written during the five-year period, would that materially alter your calculations and conclusions?

A. It would show the same result as it would on a paid basis because I would wind up with the same $9,372,000 of unearned premium reserve that I started with, and it wouldn't cut any figure. I would have as a result the paid premiums left.

The Referee: Proceed.

Mr. Folonie:

Q. If you take the unearned premium at the beginning of the five years, namely, December 31, 1916, the same as you have given it, and the unearned at the end of December 31, 1921, you can change the relation of the written premiums year by year and the intermediate unearned premium figures as much as you like, your result will not be affected in the slightest, will it?

A. No, sir. In other words, on your basis there it doesn't make any difference how much money you get and how much you pay it, it depends altogether on when you get it as to whether you make a profit or a loss.

Q. Now, you said, I think, in substance, Mr. McGee, on your direct examination, that on a basis of premiums received, as you used the term and by which I assume you mean premiums written, as I use the term—losses paid and expenses paid and the underwriting profit would be shown on that kind of a basis for the five years of $3,341,000 and some thousand.

A. $3,341,000, I think, $433.

Q. And that is about four per cent more or less on the written premiums for the period, is it not?

A. Just about four per cent, I think, of the premiums.

[fol. 2795] Q. Now, about conflagration, I think you said in substance that you did not take conflagration into account at all because they had all been paid by the companies, is that substantially your answer?

A. Yes, sir.

Q. And therefore your theory of a conflagration reserve would be that if you went through a period and had no conflagrations of moment during that period, that none ever would occur in the future, is that it?

A. No, sir; not at all.

Q. Well, when will the next conflagration of say fifty million dollars or more occur?

A. Possibly today and possibly not in a hundred years; nobody knows.

Q. Well, where will it occur?

A. May be here, may be in Europe.

Q. Now, do you have any understanding of conflagration reserve or charge that the same is designed to care for those extraordinary losses which foresight can not anticipate and which may occur at any time in the future and make provision for caring for them when they come?

A. I understand perfectly that that is the theory of the proposition, but——

Q. (Interrupting.) It doesn't have your sympathy, though?

A. Wait a minute until I finish my answer. Practically none of your clients, except a very few, set up one dollar of conflagration reserve. It simply goes to increase their free surplus and it will be paid out in dividends or anything else they please. Because very few of them set up a small conflagration reserve. They claim that it takes five per cent of the premiums to cover that. Not one of them that attempt to set it up set up anything like that [fol. 2796] amount. So theoretically it is a good thing; practically they don't live up to it. That is the reason it is not worth considering.

Q. Where did you get the understanding that the conflagration charge was advocate for at the rate of five per cent?

A. It was drilled into me pretty thoroughly in 1918——

Q. (Interrupting.) I am directing your attention to the rate of five per cent particularly. Where did you get that particular rate?

A. I say it was drilled into me pretty thoroughly in 1918, when the insurance company started mandamus proceedings to enforce the Missouri Insurance Department to place a ten per cent surcharge on each policy.

Q. Now, don't you know that as a matter of fact the general advocacy of a conflagration charge as agreed upon between the insurance commissioners and the company's representatives was three per cent and not five?

A. I am aware of that. That is the present contention. I said five a minute ago because I had that old claim in my mind. They claimed five per cent in 1918, as the records in that case will show; that five per cent of the premiums was necessary for conflagration reserve. Since that they have decided that three per cent would do.

Q. Well, you appreciate that that three per cent was a compromise figure between the companies and the Insurance Superintendent between the higher and lower claims, don't you?

A. I don't know——

[fol. 2797] Mr. Barker: We object to that as hearsay—wait a minute, Mr. McGee. Purely hearsay as to what Mr. McGee understood from somebody else.

The Referee: Overruled.

(To which action and ruling of the referee, the defendant, by counsel, then and there at the time duly excepted, and still excepts.)

Mr. Folonie: Now, answer.

The Witness: I was just going to tell them I did not know anything about it.

The Referee: That is one reason why it was overruled.

Mr. Folonie:

Q. Now, despite the fact that there is no amount specifically separated and set aside and labeled and ear-marked as conflagration reserve, is it not a fact, Mr. McGee, of which you have knowledge, that the companies—the policy of the insurance companies in general is and has been in general since the San Francisco disaster not to pay out their surplus to their policyholders in the form of dividends down to the very margin (stockholders) of those reserves required by the Insurance Departments, but to leave those accumulations to surplus in large part in their undivided surplus from year to year?

A. I know, Mr. Folonie, there has been a considerable increase in the actual amount of surplus carried by a majority of the companies but that surplus is no greater or at least very little greater in proportion to the volume of business than it was several years ago.

The Referee: Adjourn until two o'clock.

[fol. 2798] (Whereupon an adjournment was taken until two o'clock in the afternoon of the same day, the same being Thursday, the 8th day of May, 1924, at which time parties reconvened at the same place, and the following proceedings were had:)

Mr. McGee, recalled to the stand for further cross-examination on the part of the plaintiffs, was examined and testified as follows:

Cross-examination (continued) by Mr. Polonie:

Q. Mr. McGee, how long have you had and held the theory that the earned premium and incurred loss and expense method of calculating the underwriting profit or loss of an insurance company is improper?

A. I have never had any other idea, Mr. Polonie.

Q. Well, I don't know that that answers explicitly because the length of time you had no ideas is not exactly what I was asking you. How long have you had that idea on that theory? Ever since you have been with the department?

A. No, it is a question that did not come up with the department very much the first few years I was there. I think I would be safe in saying the last seven or eight years anyhow, though.

Q. During those seven or eight years that you have had this theory that you had ought to take the written premiums, paid losses and paid expenses have your superiors in your office been in accord with your view or have they differed from you?

Mr. Barker: We object to that, purely hearsay, what some one who has left the department might think.

The Referee: I don't see the relevancy.

[fol. 2799] Mr. Polonie: Preliminary to the next question I am going to ask him.

A. I don't recall that any of them expressed any very decided opinion about it.

Q. Why have you continued sending out these blanks which called for the underwriting profit to be computed on the basis of earned premiums, incurred losses and incurred expenses if you thought it was a wrong way to do it?

A. Those underwriting blanks on that basis?

Q. Talking about page 10. I mean page 10 of the annual statement calling for your underwriting and investment exhibit, so called.

Mr. Barker: That is quite different.

A. Well, that is an exhibit of the general business of the United States and adopted generally by the states, and I don't see that it governs in Missouri at all and we have never sent out a blank asking for Missouri experience on any other basis except the paid basis, under our rating law.

Mr. Polsmie:

Q. Well, why did you ask for the United States profit or loss from underwriting at page 10 on this basis if you thought it was wrong?

Mr. Barker: Wait a minute. We object until the document is identified.

Mr. Hogsett: It is in evidence already.

Mr. Polsmie: Page 10 of Plaintiff's Exhibit 1.

Mr. Barker: Well, is that the annual statement?

Mr. Polsmie: Annual statement, yes.

Mr. Barker: Very well.

[fol. 2800] The Referee: I don't understand that objection is now pending?

Mr. Barker: Not at all.

The Referee: Proceed.

The Witness: I could give no special reason why we should or should not send out that blank. That is a uniform blank adopted by the convention of insurance commissioners for making the report and used in all states for the report of the general business.

Mr. Polsmie:

Q. Well, on your theory of a proper and an improper way of computing it, it gives an improper result at page 10, doesn't it?

A. Yes, sir. I didn't say we agreed with it, although we used it.

Q. So that if I understand you correctly, you have been sending out blanks to call for the report of the companies

of their national business every year while you have been with the department consecutively and without change, upon a basis that you consider improper?

A. Individually that is I do.

Q. Now, you do that with the realization that the uniform support is given to the theory outlined at page 10 of the annual statement blank by the insurance companies and by the commissioners convention, which agreed on the form, and that it is in use and sent out by all the Insurance Departments of the United States, including your own?

Mr. Barker: I object to that as purely hearsay, and the state would not be bound in any sense by any agreement with any insurance commissioners, and for the purpose that the witness has testified and it is apparent that the underwriting statement calls for a paid basis which we contend to do with the underwriting activities of the companies at [fol. 2801] for and is the only statement which has anything all.

Mr. Hogsett: I submit that it is certainly a very proper piece of evidence for this court to receive. If it be true that the department of every State in the Union in calling for the underwriting profit or loss does show upon the earned basis. That is certainly a most cogent circumstance for this court to know. Here is a witness who bases his opinion, who says that in his opinion it is an improper basis and yet if this question is permitted to be answered, it will appear that every department of every state calls for underwriting experience, profit or loss on that basis of earned premiums and not on the basis which he charges is proper.

The Referee: Just a moment. Suppose that is true, Mr. Hogsett, what does it prove?

Mr. Hogsett: It tends to weaken the opinion of this expert witness wherein he has testified that the paid basis is the only proper basis.

Mr. Palmer: Tends to show consensus of opinion in the business.

Mr. Hogsett: And this is cross examination of a witness who on direct examination has said that the paid basis is the only proper basis.

The Referee: He has given that as his opinion?

Mr. Hogsett: Yes, and on cross examination we are undertaking to show that the departments of every State in

the Union adopts the other basis, the one that we claim is [fol. 2802] proper. It shows a custom and an unanimity of opinion among men who are looking after the——

The Referee (interrupting): This is the thought I have in mind:—

Mr. Barker: Will I be heard eventually?

The Referee: Yes, certainly. If you prefer, I will hear you now, General.

Mr. Barker: I would like to be heard because the statement is so fallacious and unfair that I don't like these statements to go in the record without an answer at the time.

This is introduced as an exhibit and speaks for itself and is a financial statement and has nothing to do with the underwriting activities of the companies at all; simply calls for their financial statement. Now, the underwriting report, as the evidence in this case shows by their own witnesses, calls for a paid or written basis as the Missouri statute calls for it. This is simply confusing issues, confusing the sheet called the annual statement, which is the financial statement, with the underwriting statement, and is done for the purpose of showing that many States in the Union have called for a financial statement. Now, a financial statement and an underwriting statement are entirely different, as the evidence in this case shows, and on the underwriting statement, which is the only statement the Superintendent of Insurance can figure rates at all on is the underwriting experience by classes, which calls for a paid basis; and for the further reason, my objection is that it is ridiculous for this witness to be asked a question as to what [fol. 2803] Rhode Island does, New York does, Pennsylvania does, or any other State, and he has not the slightest idea and I don't want this witness to be bound by their statements unless I ask him a preliminary question. If this witness knows of his own knowledge that Rhode Island uses this blank, and that Texas does, then how can he be interrogated about it—unless he does?

Mr. Hogsett: He says the annual statement is simply a financial statement. Page 10 is, "Statement of underwriting exhibit," which gives the premiums written and unearned at the beginning, unearned at the end, and premiums earned. In like manner it gives losses, losses paid, losses outstanding at the beginning, losses outstanding at the end, and losses incurred, and in like manner it gives expenses

paid, deducting expenses unpaid as of the beginning of the period, expenses unpaid as of the end of the period, thus arriving at expenses incurred. In other words, it supports exactly the theory we contend is proper. This witness has testified to a contrary opinion. It is competent to show that not only Missouri but every State uses this method and not as General Barker says in arriving at the financial condition of the company. That is shown thoroughly and this is the report and it has its underwriting experience, namely, its profit or loss, precisely the same thing which Mr. Hide undertook to arrive at at the time he promulgated his order.

I submit it is a cogent piece of evidence and if I may refer to the Arkansas opinion where this has been passed on, the [fol. 2804] only case in the country where a court of last resort has passed on it, they gave almost controlling force and effect first to the fact that the companies and the commissioners agreed upon the earned basis as proper, and second, that every State in the Union uses that, and that alone. And they referred to the fact that Mr. Bullion, the commissioner of Arkansas, seemed to stand alone in his opinion that the cash basis, as he called it, was the proper one.

Mr. Barker: Knowing at the outset of this case that the insurance companies were trying to adopt the Arkansas case, where by stipulation and agreement it was agreed that that evidence should go in—and it went in in this case all the time over my objection, contending in New York and in Chicago that the State of Missouri was not bound by hearsay evidence as to what took place, as I termed it in my objections, in isolated rooms in the Astor Hotel. Your Honor allowed witnesses to testify as to what he understood certain men did in New York, over my objection. Now he asks Mr. McGee who does not know any more about it than a man in the street, and I have objected to that. It has gone in as to the actions of the insurance commissioners several years ago, and the insurance companies, which, of course, we have contended is not binding on the State of Missouri, is pure hearsay, and does not tend to prove or disprove anything, and does not reflect the true fact because only 26 commissioners out of 56 voted——

Mr. Hogsett (interrupting): 56 States in the Union?

[fol. 2805] Mr. Barker: Counting Porto Rico and all the adjuncts—you have introduced this for deceptive purposes,

but if you will bring the real record and let it speak for itself and not be asking the witness, which would be purely hearsay——

Mr. Hogsett (interrupting): Are you willing to have it known also, since you have gone to Porto Rico and elsewhere for some imaginary facts, that in Minneapolis last year Mr. Hide made a strenuous effort to have that agreement reversed and that he got a total of five votes out of 40 odd that were present?

The Referee: Just a minute.

Mr. Barker: We will admit that a committee is now working on it with the best possible chance of having it declared fallacious, which it is.

Mr. Folonie: Does the court wish to interrupt? I will give my consent.

The Referee: I think the discussion is going very far afield from the discussion before the court.

Mr. Blume, will you kindly read the question pending?

(Question read by the reporter.)

Mr. Barker: My objection to that is that it is hearsay.

The Referee: He is asked, if I catch the purport of the question, whether he takes the view he has announced with a realization of the fact, which I suppose means a knowledge of the fact, of certain things recited in the question. We might expedite matters a bit by asking Mr. McGee whether or not he knows.

Mr. Barker: That is what I thought.

[fol. 2000] The Referee:

Q. What is the extent of your knowledge on that subject, Mr. McGee?

A. Nothing, only what might be defined as hearsay; direct knowledge I have none.

Mr. Barker: Q. Do you know what kind of report Rhode Island—the companies made to Rhode Island Insurance Department last year?

A. I never saw a report to Rhode Island in my life.

Mr. Barker: Q. And do you know what kind of a report they made to Arizona last year, or the year before?

A. I do not.

Mr. Folonie:

Q. Did you ever see a report made by an English company on the fifty per cent basis, made to their government, that you have testified to on direct?

Mr. Barker: Never asked him that.

Mr. Folonie: Fifty per cent of the unearned premium?

Mr. Barker: That was never asked, direct or indirect.

The Referee: It is asked now.

A. I didn't put in any exhibit of that sort, or any figures of that sort.

Mr. Folonie:

Q. Didn't you say on your direct testimony that the English companies adopted a method of setting up a reserve on their unearned premium of fifty per cent of the amount that was done in the United States?

A. I think you would find that I said something entirely different. When I concluded with the Richards statement, General Barker asked me if I had made any figures on what was known as the foreign method and I said I had not be- [fol. 2807] cause as I understood the foreign method, the only difference between it and the Richards method was that Mr. Richards said it took a 35 per cent to take care of the losses and by the foreign method fifty.

Q. How do you know whether the English method is the same or different from the Richards method except from what you have read or heard?

A. That was the way that I put it; that I so understood.

Q. You know a lot of things from your general information in your business by being in it, aside from the information you have specifically read by seeing a report of a particular state, don't you?

A. I think I know several things that I have never seen.

Q. Don't you know, as a matter of general information in your business that the form of annual statement by fire insurance companies, such as the plaintiff's Exhibit number 1 is in general use and sent out by departments of the various states of the United States every year in substantially this same form?

A. I think that it is, but when you pin me down to actual knowledge, I don't know.

Q. Well, it is a matter of common knowledge in your business, isn't it?

Mr. Barker: I have no objection to that at all. We were objecting, Your Honor will understand, to the conversations between the Insurance Commissioners and other people at some other place. That was hearsay.

Mr. Hogsett: All right, there is no objection.

Mr. Folonie:

Q. Now, from your common knowledge of the business, [fol. 2808] you take the position that the basis of earned premiums and incurred losses and incurred expenses is wrong, despite your knowledge of the common knowledge you have gained from your acquaintance with your business that such annual statement blank is set out by the departments of all states of the United States to insurance companies and required to be returned in substantially the same form as that of Plaintiff's Exhibit number 1, and despite common—the knowledge gained by you from the knowledge of the common knowledge you have gained in your business that the same was adopted pursuant to an agreement between company representatives and the representatives of insurance departments and therefore is styled a convention blank of annual statement?

Mr. Barker: We object to that question because it calls for pure hearsay and because at that convention in New York only 26 out of 56 members attended. It has been entirely discredited and used only by the lawyers in this particular lawsuit and calls for knowledge which this witness apparently does not have, and we are objecting to any testimony as to what any state other than Missouri sends out as not binding at all upon the State of Missouri, which has a rating law; many other states not having a rating law and the conditions being entirely different, and unless there is a similarity shown in the situation we object to it as hearsay.

The Referee: Without indicating any estimate of the probative value of the evidence inquired for, this question in effect asks the witness whether or not as a matter of information which he has obtained in the course of his eleven [fol. 2809] years' experience in his official position he does

or does not know of certain facts. The objection will be overruled.

(To which action and ruling of the referee, the defendant, by counsel, then and there at the time duly excepted, and still excepts.)

The Witness: Now, will you read the question please, Mr. Blume; too long to keep track of.

(Question read by the reporter.)

A. I am very decidedly of the opinion, in the face of all that, that it does not reflect the true condition of the company or show its true profit.

Mr. Folonie:

Q. Now, I call your attention to page 7 of the annual statement blank, Plaintiff's Exhibit number 1, where appears "recapitulation of fire risks and premiums on all business effective on and after January 1, 1921" and setting out a table of fractions for computation of unearned premiums, "Year written, 1921," "term, one year or less," fraction unearned—one-half and containing various fractions during the different years, and I will now jump to the fifth year, "year written, 1917, 5 years, one-tenth; 1918, five years, three-tenths; 1919 for five years, one-half; 1920, for five years seven-tenths; and 1921 for five years, nine-tenths." Now, I will ask you whether you don't require every company doing business in this state to make return of that information to you every year since you have been with the department?

A. Yes, sir.

Q. And upon those fractional fractions which are set forth on that table at page 7?

A. Yes, sir.

[fol. 2810] Q. May I see again your sheet with your nine million dollar figure on it, please? (Counsel examines sheet.)

The Witness: Just keep that if you want to, we have another one here.

Mr. Folonie: All right.

Q. Now, in your—I am referring to the sheet upon which appears a computation purporting to reverse the figures so as to put unearned premiums for 1917 down in the year 1921, and put those for 1921 back to 1917, and purporting to reach a figure called net underwriting profit of $9,992,508—I think that will serve to identify the sheet.

The Referee: Would there be any objection to having that sheet marked with a given number or symbol, for identification purposes only?

Mr. Barker: We intend to introduce them all later. It might confuse our introduction.

The Referee: Very well.

Mr. Folonie:

Q. Now, in your figures in the first group on this sheet, you have volume of business increasing which shows the unearned premiums beginning of period, written premiums year by year, and unearned premiums at end of period for each of the five years and then the earned premiums for each of the five years—that first tabulation is according to the figures here in evidence on the part of the plaintiffs, is it not?

A. Yes, sir.

Q. Now, in the second group I note that the year opposite 1917 and under the column "unearned premium at beginning of period," you have a figure of $17,961,290.00. Now, [fol. 2811] is that the unearned premium at the beginning of the period as contained in any of plaintiff's figures?

A. It is not.

Q. Is the unearned premium at the beginning of 1918 as it here appears at sixteen million in your figures, that is the figure at the beginning of 1921, in the plaintiff's figures, is it not?

A. The figures in the second tabulation are an exact reversal of those and are in just the reverse order exactly.

Q. I know you say that, but I am seeking to show that is not a fact, according to my ideas of what a reversal is. The figures as they appear in the company's figures at the beginning of the period running from 1917 to 1921, simply taking the million figures alone, eight million, nine million, ten million, twelve million and sixteen million, do they not?

A. Yes.

Q. Now, you don't have that first figure of eight million at the beginning of any of your periods in your figures, do you?

A. If you would reverse the——

Q. (Interrupting.) I say, you don't have it at the beginning of any of your figures, do you?

A. I do not. Reversal would put it at the other end, wouldn't it?

Q. If you will answer the question you will probably be given a chance to explain by General Barker.

Mr. Barker: No, that is right.

The Referee: Proceed. The statement was harmless.

Mr. Folonie:

Q. Have you in reversing these figures—you have taken the same figures of unearned premiums of the plaintiffs and, as you say, reversed them accepting them just as they [fol. 2812] were, haven't you?

A. Yes, sir.

Q. Now, have you taken the earned premium figures as given by the plaintiffs and reversed those in your figures?

A. No.

Q. You haven't taken a single earned premium figure as we have it in our figures and used it in yours, have you?

A. The earned figure——

Q. (Interrupting.) Answer the question.

A. Certainly not, because it would not work out that way.

Mr. Hogsett: That is the point.

The Witness: That is exactly the reason of those figures, is to show the absurdity of your proposition of earned premiums.

Q. Now, in other words, you have——

A. (Interrupting.) It gives you a different result entirely.

Q. Wait a minute, Mr. McGee, and answer the questions, please.

A. All right.

Q. You have taken and adopted all of the plaintiff's unearned premium figures, simply putting them in different arrangement, have you not?

A. Exactly.

Q. You have taken all of the plaintiff's figures on written premiums and changed their relation, have you not?

A. Yes.

Q. You have not taken any of our earned premium figures but made new ones of your own, have you not? Just answer the question yes or no, please now.

A. May I explain afterwards?

Q. Answer first.

A. May I explain after I make the answer?

[fol. 2813] The Referee: Certainly.

Mr. Folonie: We will see about that.

The Witness: Let the court settle that, then.

The Referee: If you can do so, answer the question yes or no and then make whatever explanation is necessary to enable you to state the truth, the whole truth and nothing but the truth, so help you God.

A. That is what I wanted to do without Mr. Folonie choking me off.

Mr. Folonie: Now, I will re-ask the question.

Q. Is it not a fact so far as earned premiums are concerned, you have discarded those earned premium figures of the plaintiff as given year by year and made new ones of your own?

A. Yes, sir.

Q. Now, if you want to tell the court why you have done that, go ahead.

A. You have had me outline, and you have outlined, the method of computing earned premiums when you have the unearned premium at the beginning of the term, at the end of the term, and the written premiums for the term. Those unearned premiums year by year are figured on that basis. If you will make the calculation you will find that they are correct and that goes to show that you can get almost any kind of a result you want to out of your earned premium business, dependent on the time you get in the money and not on the receipts and expenditures of the business. And that was all I was trying to show in that—and I think it shows it clearly.

Q. Have you finished your explanation?

A. For the present.

[fol. 2814] Q. All right. Now, I will ask you some more questions. If instead of taking your unearned figures just

as we had them without shifting them all around backward and taking the written figures as we gave them and shifting them around backward——

Mr. Leahy: Instead of, you mean.

Mr. Folonie: I will start over.

Q. If instead of doing what you had done, you had taken the unearned premium figures and reversed their order and taken the written premium figures and reversed them in their order and taken the earned premium figures as we gave them and reversed them in their order, you would get exactly the same result as we did, wouldn't you?

A. If I had just turned that table upside down and handled them the other way certainly it would have given the same result.

Q. Certainly. Now, I will ask you, if you had taken our same earned premium figures and the same written premium figures you did and changed all the unearned premiums around and re-computed what the earned premiums would be, figuring back from the earned premiums, you would still have the same result we had, wouldn't you?

A. I didn't just exactly catch that question.

Q. If you had adopted our earned premium figures——

A. (Interrupting.) Most certainly I would.

Q. (Continuing.) You would have the same result even though you had changed the unearned premium figures?

The Referee: Will you read that question, Mr. Blume, please?

[fol. 2815] (Question read by the reporter.)

A. Of course I would.

Mr. Folonie:

Q. You would have the same profit and loss result?

A. Why, certainly I would; if I had adopted your figures I would have gotten the same result; no question about that.

Q. Now, as a matter of fact, Mr. McGee, if you have nineteen million dollars of written premiums in the year 1921, and assuming that they would go in the ratio of earned to unearned of twenty per cent earned and eighty per cent unearned, if you—you know that eventually that unearned part will become an earned premium do you not?

A. Yes, sooner or later.

Q. And if you changed that unearned figure back five years and none of the insurance is written for a period longer than five years, you know that all that unearned premium will become earned premium during the elapse of that period, do you not?

A. Yes, sir.

Q. And written premium, if you are going to accept the earned premium basis for calculation, consists of two parts, an earned part and an unearned part as of any given date, does it not?

A. Yes, sir.

Q. And that earned part, when you have once ascertained it, for a given period, as a stable figure after you have once ascertained it, isn't it—for that period?

A. Yes.

Q. Now, you can figure the earned premiums instead of figuring them for a five-year basis, you can figure them year by year, can't you?

A. Yes, sir.

[fol. 2816] Q. Now, if you take your earned premium figure for the first year, 1917, which is computed here by us at ten million plus, it doesn't make any difference if that is the earned premium for that year, whether you put it as the first year or the fifth year in your equation, does it?

A. It would make a difference whether it is first or fifth, yes.

Q. What difference does it make if your earned premium for that year is in fact ten million, what is the difference whether it is in your first year or fifth year, so far as the five-year period is concerned—if that is the earned premium for that year?

A. I don't get the drift of your question yet, Mr. Folonie.

Q. Well, if you figure each of these five years separately and get five earned premium figures, one of ten million dollars, one of twelve million dollars, one of fourteen million dollars, one of seventeen million dollars, and one of nineteen million dollars, it doesn't make any difference in totaling those what order you put them in does it?

A. Not a bit, but you have no occasion to total them in calculating the unearned premium reserve for the five-year

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period. You might throw them all out except the lost one. That is the only one that counts.

Q. Well, if you figured year by year, each one of them counts, doesn't it?

A. It doesn't—when it comes to getting a result for the five-year period.

Q. Let's see whether it does or not. You take the year 1917 and if the unearned premium at the beginning of that period was eight million dollars, and there were eleven million dollars of written premiums, and your unearned [fol. 2817] premium at the end of that year was nine million—and I am leaving off the odd figures—your earned premium computes ten million dollars?

A. Yes.

Q. That is a correct calculation, is it not?

A. Yes.

Q. Now, taking the last year of the row, which at the beginning of the year had an unearned premium of sixteen million and a written premium during the year of nineteen million, and an unearned premium at the end of the year of about seventeen million, the earned premium at the end of that year is nineteen million? Is that a correct method of computing that year by itself?

A. The method of computing it year by year is exactly the same as it is.

Q. Well, you get a bit different result if you take the year 1917 and figure it by itself and then take the year 1918 and figure it by itself, and the year 1919 and figure it by itself, and the year 1920 and figure it by itself, and the year 1921 and figure it by itself and then having computed those five earned premium figures, adding them together, it would get a bit different result than you would by taking the unearned premium at the beginning of 1917, adding together all of the written premiums for the five years, deducting the unearned premium at the end of the fifth year, wouldn't you get identically the same result?

A. Certainly.

Q. Then, whether you computed it on one year, or whether you compute it on five years, if you computed it on this basis we have mentioned, it comes to exactly the same thing doesn't it?

A. Undoubtedly.

[fol. 2818] Q. Now, upon the exhibits here in evidence, showing premiums of the various companies, the unearned premium at the beginning of the term of five years we have in question was in fact $8,372,804, was it not?

A. Yes, sir, that is correct.

Q. And if you take any other figure there, either a larger one or a smaller one, you necessarily throw yourself into a different result, do you not?

A. Certainly when you change figures you change results; that is beyond question.

Q. Now, at the end of the five-year period, according to the exhibits here in evidence, the unearned premium in fact was $17,061,209?

A. Yes, sir.

Q. If you change that figure for any purposes you see fit, you make a change in that figure either by increasing it or decreasing it, and you produce a different result, do you not in your computation?

A. Certainly.

Q. Now, if you leave those two figures the same as they were in fact, you can change the written figures and the intermediate figures of unearned in any relation that you see fit and bring the same results, won't you?

A. If you leave those figures the same, yes, sir.

Q. Now, as a matter of fact, the figure that you put in your hypothesis of seventeen million dollars of unearned premiums at the beginning of the period is not any figure which exists in fact at all, is it?

A. I have admitted ——

Q. (Interrupting.) Purely hypothetical figure?

A. I have admitted that some half dozen times, Mr. Folonie.

[fol. 2819] Q. And adopting that figure as opposed to the real figure of eight million dollars, makes a necessary difference in the result, does it not?

A. Certainly.

Q. Now, you had an explanation you wanted to make. Go ahead before you get too far away from it.

A. All right. I said to you a little bit ago that those figures in the second table there were a symbol reversal of the figures in the first one which are the figures in your exhibits. You would certainly understand very clearly that a reversal of the business of the five years would necessarily mean

that it placed the unearned premium reserve at the end of the term in the place of the unearned premium, which is shown at the beginning of the term in the other figures—wouldn't it? When you do that, it reverses the entire result and it makes it an entirely different calculation as to your earned premiums and shows absolutely the effect of your earned premium proposition when your business is going down.

When your business is going up, it is a prosperous business, you are losing money. When it is going down business is decreasing, you are making a good profit. Fine. Go to it.

The Referee: That is, do you mean, Mr. McGee on the earned premium theory?

A. Yes, sir.

Mr. Folonie:

Q. Now, as a matter of fact, by taking the hypothesis of a seventeen million dollars unearned premium at the beginning of the term as you have done as opposed to an eight million dollar unearned premium existing in fact, you have [fol. 2820] assumed a volume of business during a previous period which did not exist, isn't that a fact?

A. You might say very clearly all the way through that I have assumed a state of business not only for the previous five years, but for the five years in the figure that did not actually exist. Now, I am using merely an illustration there, and I used the figures nearest at hand to make the illustration, and that is all. You may consider that whole thing as absolutely hypothetical but an illustration of what they are trying to illustrate.

Q. Yes. Well, in your third group of figures that you have here, you have started out with an unearned premium hypothesis of $10,612,159. Where did you get that kind of a figure?

A. They are the same crazy figures you have up there just arranged in a different way, that is all.

Q. You know that there was not such a figure in fact at the beginning of the term, do you?

A. Certainly not. I don't pretend that there was. That is a hypothetical proposition just like the other one all the way through; using the figures close at hand to illustrate the point I had in mind.

Q. Now, if in fact instead of there being an eight million dollar unearned premium at the beginning of this period, you were to assume that there had been a seventeen million dollar unearned premium amount carried over from the previous period, that would then support the hypothesis that a larger amount of business had been done during the previous term than was in fact done?

A. Presumably, yes.

[fol. 2821] Q. And having done such a larger volume during the period before your computation starts, that profit which on a written basis we say would in fact have been taken by the companies would have been carried over and credited to the present period, is that correct?

The Witness: Read the question, please, Mr. Blume. I don't just catch the tenor of it.

The Referee: Read the question.

(Question read by the reporter.)

Mr. Folonie: I will re-state it.

Q. If the unearned premium carried forward from the year 1916 instead of being eight million dollars as we say it was in fact, were assumed to be seventeen million dollars instead, that would mean that nine million dollars of additional business done during the previous period was carried forward and credited to this period? Isn't that true?

A. Yes, if it had been earned in the previous period and realized some place in this period as on your method.

Q. Then that large volume of business or increased volume of business which would have been done in the previous period and for which we would not have taken credit as premium income would go to swell the premium income during this period over what it would otherwise be?

A. Exactly.

Q. So that if in fact we had seventeen—nine million dollars more business to carry say during the year 1917—1916 than we did in fact, it would automatically by our methods [fol. 2822] go to enhance the profits we would make during this period, is that correct?

A. Yes.

The Referee: By "this period," you mean the five years here in question?

Mr. Folonie: Yes.

The Witness: Now, may I make a little remark right there, Mr. Folonie?

Mr. Folonie: Go ahead.

The Witness: I am glad you got that just as you did.

Mr. Folonie: So am I. We are both happy about it, then.

The Witness (continuing): Because you have demonstrated very clearly that you are trying to carry out of this five-year period into the next five-year period a profit which was made in this five years and belongs to it, as we claim. You have demonstrated it very clearly, and I thank you.

Mr. Folonie: So many things you and I can not agree on, this will just have to remain one of them, I am afraid.

The Witness: All right, we will just agree to disagree and let it go at that.

Mr. Folonie:

Q. You have suggested, Mr. McGee, a method of prorating supposed profits of companies upon their invested assets to Missouri by taking the proportion which Missouri premiums bear to the United States premiums?

A. Yes, sir.

Q. Now, suppose, Mr. McGee, that in one year the Missouri premiums should represent two per cent of the pre- [fol. 2823] miums of the United States, your idea would be, then to prorate two per cent of the investment earnings to Missouri?

A. Yes, sir.

Q. Now, suppose that during the following year Missouri premiums remained identically the same as they were the year before, and the business of the United States dropped off fifty per cent—or the premiums of the United States dropped off fifty per cent, but Missouri remained just as it was, then instead of having two per cent you would have four per cent that year, would you not?

A. Yes.

Q. So that with Missouri premiums remaining identically the same from year to year, the proportion of the investment earnings which you would undertake to apportion to Missouri would fluctuate, depending upon how the premium income happened to go in the rest of the United States?

A. Yes, sir.

Q. Now, suppose that the companies should suffer very heavy losses over a long period of years on their investments, would you apportion those losses in the same method?

A. Yes, sir.

Q. So that if the companies invested their funds in securities where they used reasonable judgment at the time they invested them, we may assume that their judgment proved to be bad or extraordinary conditions came along which destroyed the value of their investments, you would make up those investment losses by depreciation of their securities, by requiring the policyholders in the State of Missouri to make good those losses?

A. Does that follow from my statement at all in any way? [fol. 2824] Q. Well, I am asking you.

A. It does not, absolutely, and you know it.

Q. So that the investment losses of these companies, if it should run millions of dollars a year over a period of many years, you would continue to absorb those losses from year to year as they went by increasing the rates of premium charge in Missouri to compensate and make it up, is that your method?

A. You know just what you are driving at—I do not.

Q. Well, you would not propose to take a proportion of investment profits and not take losses as well, would you?

A. Now, look here, you are trying to get me to admit that I am proposing to do something that is entirely foreign to the proposition.

Q. Well, it is a necessary consequence of your logic——

A. (Interrupting.) No, no, it is not—I beg your pardon.

Q. Well, suppose I ask the question specifically and you answer the question yes or no, if you can. If investment losses should be suffered by these companies over a five-year period, each year sustaining a loss on their investments, do you advocate in making up the experience of these companies in the State of Missouri for the purpose of determining whether they should have an increase or decrease of rates, taking the proportion of those losses which Missouri premiums bore to United States losses and throw them into your equation in determining whether they had made a profit or loss, and how much?

A. Yes, sir, I am contending that that should be taken into consideration, whether it is a profit or a loss. The [fol. 2825] Missouri law says we shall consider the earnings of the company and you can not consider the earnings of the company without considering all of its activities, and that is the only reason for apportioning a portion of the investment expense—or investment earnings or losses to Missouri, to arrive at the real amount of the earnings of the business produced in Missouri.

Q. Then if it should appear on a hearing such as the present that during the period—this is purely hypothetical—that during the period of five years from 1917 to 1921, inclusive, the companies doing business in this state had made an underwriting profit upon their insurance activities alone of ten per cent, that they have suffered losses upon their investments of their assets during that period equivalent to twenty per cent upon the premiums, then the companies would be entitled to an increase of rates to compensate them for a net ten per cent loss? Is that correct?

A. They would be entitled to an adjustment of rates and that should be taken into consideration.

Q. Even though they had been making money upon the insurance policies issued to policyholders in Missouri during that period?

A. If the losses on securities are legitimate losses under conservative management, Missouri or any other state is entitled to furnish premium which will allow them to make a reasonable profit; that is the way I interpret the law.

Q. Then every policyholder who buys a policy in the State of Missouri upon that theory is taking the chance of [fol. 2826] whether the investments of the companies shall prove to be profitable or unprofitable, if they have used reasonable judgment in the first instance in making the investments?

A. Certainly is, any way you figure it. Taking several kinds of chances.

Q. Therefore, you are advocating what is in substance a mutual plan of doing business, are you not?

A. No.

Q. Why should the policyholders of the State of Missouri pay to make up losses of insurance companies upon their investments of their funds derived in those years—in previ-

ous years, not from Missouri policyholders but from policyholders throughout the United States—why should Missouri policyholders make up that loss when their investments prove unfortunate? Any stock company?

The Referee: Pardon me. I am confused there, Mr. Folonie. Do you mean any investments or funds derived from policyholders in other states?

Mr. Folonie: Talking about their investments which they have accumulated from contributions by stockholders and from profits derived from policies written in states other than Missouri during the previous periods of time.

The Referee: Now, read the question as it stands, Mr. Blume.

(Question read by the reporter.)

The Witness: Mr. Folonie, I look on the insurance business just as any other business. It must be considered as a whole and just like any other business; it must have a [fol. 2827] profit on the goods it sells, and if it makes some losses, as every business does, the price of the goods must bear profit enough to take care of those ordinary losses some portion of the business, and it does not——

Mr. Folonie:

Q. Now, I want——

A. (Interrupting.) Now, hold on until I get through. And it doesn't make one particle of difference whether that business is confined, we will say, to Kansas City here, or whether it is spread over every State in the Union, I think that same rule applies and as to splitting up the territory, I don't know that that affects the general proposition in any way at all because all over that entire territory they should have that amount of profit which enable them to conduct the business and make it attractive enough for them to remain in the business.

Q. You think, then, that the risk of investments made with reasonable judgment which proves unfortunate should fall on the policyholder and not on the stockholder?

A. I think that is a wrong way of putting it, Mr. Folonie.

Q. Well, do you think that?

A. No.

Q. Well, isn't that the effect of your position?

A. No. You are trying to make it appear that I am in favor of putting it off on the policyholder directly right then and there. I am not talking about any proposition of that sort at all. A loss may come this year from one cause or another, and there may be a profit the next year, or there may be two years in which there is a loss. There may be a string of four or five years in which there is a profit. No man can tell about that in any business. But he must have [fol. 2828] price enough for his goods in the first place to take care of those things, and that is what the insurance company is entitled to, just the same as any other business man; and in order to arrive at that I think you must necessarily consider the activities of the whole thing, whole business as one business, and not split it into an underwriting and banking proposition and make two separate businesses out of it.

Q. Now, take the case of the Aetna Insurance Company, which has been in business for about a hundred years and which has assets of about forty million dollars, accumulated over a long period of years; and suppose that of those assets collected over a period of seventy-five or a hundred years they should by some disaster lose half of their assets, or 20 million dollars, in a given year. Is it your idea that the rates of fire insurance in the State of Missouri ought to be raised so as bear that proportion of the 20 million dollar loss of the Aetna Insurance Company which the premiums of Missouri at that time bore to the premiums of the United States?

A. No, sir, but I don't think that I have said anything that would indicate that I would base any judgment on one year's loss or two years' losses.

Q. Well, suppose it went over five years, and they lost 20 million dollars in five years, do you think then that ought to be saddled on Missouri policyholders?

A. It ought to be borne by the business, and the business must have a rate that will take care of that. That is what I am contending, in a nut shell. If the business is con- [fol. 2829] servatively managed it is entitled to a rate that will give it a profit on the entire business, considering all of its activities.

The Referee:

Q. Mr. McGee, is this your idea: That the insurance business, in order that it may continue, is entitled to such premium rates as will enable it to defray the reasonable expense of the business and to afford a reasonable business profit to those who are engaged in it, and that the rates, the whole country over, should from time to time be adjusted so as to produce that condition?

A. Yes, sir.

Q. Is that the idea you are trying to express, or not?

A. Yes, sir, that is about the idea that I am trying to get at.

Mr. Folonie:

Q. With that idea in mind, haven't you completely destroyed the State of Missouri as a rating unit and created a hypothetical national unit?

A. I don't see that I have, but it will——

Q. (Interrupting.) Let me illustrate it to you.

A. Wait a minute. Do you want my opinion about that, or just let it go as it reads?

Q. You have answered the question to my satisfaction, if you are satisfied.

A. Go ahead.

The Referee: What were you going to say, Mr. McGee?

A. I was just going to say that I had an idea that if it was properly handled, doing away with the states as rating units and spreading it over the entire nation, so that all the varying conditions could be taken into consideration, it ought to prove a more satisfactory way of handling it.

[fol. 2830] Mr. Folonie:

Q. In other words, to put it in a nut-shell, you advocate national consideration of these problems rather than a state consideration?

A. I think it would be equitably adjusted in that way.

Q. Now, having in mind the particular fact that the State of Missouri cannot control in any year anything beyond its own borders, I will direct your attention to the general knowledge which I assume you have, with the rest of us, to the railroads, where they have intrastate and interstate ac-

tivities and where they have investments entirely outside of their operative departments. Don't you know as a matter of general business experience that railroad companies like the Union Pacific Railroad Company that have large investments in stock of other railroads and in securities of various kinds segregate those investment earnings entirely, and in their rate-making reports to the Interstate Commerce Commission report only their operating revenues and disbursements?

A. I don't know a thing in the world about it.

Q. Don't you know also that so far as railroad rates are concerned that the rating powers of a state are exercised only within its own borders and that when a rate, say of two cents a mile for carriage of passengers, exists, that the earnings or the losses of the railroad within the borders of the state alone are considered in fixing those rates?

A. I don't know a thing in the world, Mr. Folonie, about what is considered in fixing a railroad rate. I will agree with you that I understand very well that state laws do not reach beyond state lines. Further than that I don't know a thing in the world about it.

[fol. 2831] Q. And don't you know that in all the utilities where the same company is operating a gas company and an electric company that the rate making bodies universally fix the rate upon the gas business, upon the expense and the gains of that part of the business, entirely separate from the electrical part of their business?

A. I don't know. I know just as much about that as I do about fixing a railroad rate—which is nothing.

Q. Now, on the method which you advocate here, over a period of years where such a procedure was conducted of making good the losses of the companies upon their investments when they prove unfortunate by adding it onto the premiums charged to policyholders, the consequence would be that the stockholder never could suffer any loss on his investment but would receive a return whether his investments proved fortunate or unfortunate, and he would get the same amount always, wouldn't he?

A. Yes, on the supposition that you are working on, that they always lost money on the investments, it certainly would be an ideal condition for him.

Q. He wouldn't have to care much whether his investments were of one kind or another, so long as they couldn't

be said to be unreasonable. What amount of return do you have in mind as the return you are going to allow the hypothetical companies on your hypothetical basis?

A. Well, I haven't fully decided on that yet.

Q. Well, we might as well stop the lawsuit, if the court please. We are failing at the very crucial moment.

Mr. Barker: Just because Mr. Folonie is peeved at the witness' answer he shouldn't say anything like that.

[fol. 2832] Mr. Folonie: What time do we take our regular recess, if the court please?

The Referee: Right now.

(Whereupon a short recess was taken.)

Mr. Folonie:

Q. Mr. McGee, have you considered at all in connection with this hypothesis you present here the fact that the companies have a complete legal right to distribute their surplus above the reserves prescribed by your department and other departments and after making provision for their liabilities by way of debts existing—that they have a right to distribute all the surplus, so called, among the stockholders at any time they see fit?

Mr. Barker: Now, wait a minute. I don't think Mr. McGee ought to be asked a legal question, because he is not a lawyer and couldn't know anything about it.

The Referee: The question assumes the existence of a legal right.

Mr. Barker: Well, we withdraw it, if he knows anything about it.

Mr. Folonie: If he doesn't know anything about it you will withdraw it anyhow, won't you?

Mr. Barker: No. If he can tell me the law about it I want it.

The Witness: I don't say I know anything about the law, but I don't know of anything to prevent them from doing it.

Mr. Folonie:

Q. Now, if such a plan were to be initiated by taking the earnings upon the investments belonging to the stockholders of the insurance companies and taking them from the [fol. 2833] stockholders and taking your accretions and

earnings and distributing them to other policyholders by way of rate reductions from their premiums which they would otherwise have to pay, and if they were to be charged only for the indemnity that they were provided, wouldn't you anticipate that the companies would distribute their surplus among the stockholders instead of leaving it in the insurance company's treasury?

A. I don't see any reason why they should. Do you?

Q. And don't you think that if the surplus maintained by insurance companies as they are generally maintained in the business, if they were taken out of the business and distributed among the stockholders instead of being retained in the corporate treasuries, that it would greatly reduce the assurance of the policyholders that their losses would be paid when they occurred?

A. If that were done it would.

Q. Wouldn't you consider that anything which would cause the withdrawal by insurance corporations of their surplus from the corporate treasury and distribute them among the stockholders would be an inadvisable course for the good of the public at large—the insuring public?

A. Yes, I will agree to that; but you haven't shown me anything that would have that effect. I don't know just what you are referring to. I suppose you are trying to show me that they would pay it out and call for another increase of rates. Is that the idea?

Mr. Folonie: If the court please, I prefer not to enter into an argument with the witness.

[fol. 2834] The Referee: Sustained.

Mr. Folonie: I shall refrain from answering the question on that ground—and not meaning any discourtesy to him.

Mr. Barker: But you could answer it all right?

Mr. Folonie: Yes, I could.

The Referee: Any course that tends to avoid argument and personalities will be approved by the referee. Proceed.

Mr. Folonie:

Q. Have you made any calculation of the rate or ratio of returns to companies upon their capital and surplus combined, either upon the basis of written premiums or on the basis of earned premium income?

A. Yes, sir.

Q. Have you made a calculation of their earnings for this five years upon underwriting and investment combined upon capital and surplus?

A. Yes, sir.

Q. For the United States or for the State of Missouri, or both?

A. Both.

The Referee: Was the question answered?

The Reporter: Yes, the answer is "both."

Mr. Folonie:

Q. Have you in the calculations made considered the invested assets—the admitted assets or the admitted and non-admitted assets? In other words, have you taken the non-admitted assets into account?

A. I did not figure on assets at all, Mr. Folonie. I figured on invested funds.

Q. The assets of the various plaintiffs in part consist of so-called admitted assets and in part of non-admitted assets, do they not?

A. Yes, sir.

[fol. 2835] Q. And have you taken into account their assets admitted or non-admitted or both in your calculations?

A. The invested funds, Mr. Folonie, form only a part of the admitted assets. The entire assets are not considered at all; merely the part that is invested.

Q. In other words, you have made no calculation which would take into account the entire equity of the stockholders in the corporation?

A. Just what do you mean by that?

Q. I mean you have not taken into account all the assets invested and uninvested and stopped to ascertain the amount of the earnings on those, but only that portion which was invested, as I understand you?

A. That is all. I don't conceive that there would be any earnings on the ones not invested.

Q. Yes. We will concede for the purpose of my question that you are correct, that they would earn money only on those parts which were invested. You haven't undertaken to find what return there was on all the assets, invested and uninvested, have you?

A. I figured it as applied to capital, like I would in any other business, what the earnings were on the investment.

Q. Disregarding surplus?

A. I don't know that a man is entitled to——

Q. (Interrupting.) No, I am asking you whether you did it or not—disregard it in your calculations.

A. I used both. The amount of percentage that was shown on capital and on combined capital and surplus.

Q. When you say surplus you mean surplus as set forth—as surplus is stated in the annual statement blank?

A. Yes, sir.

[fol. 2836] Q. Now, you appreciate that in arriving at that surplus figure there has been excluded that part of the assets of the company which are set up as an unearned reserve, do you not?

A. Certainly. That is not part of the surplus, as set up in the annual statement.

Q. That is, in arriving at surplus first capital is taken out and the unearned reserve or unearned premiums are taken out, and then the other principal item remaining is then the surplus?

A. Yes.

Q. Well, now, if you were going to take a written premium basis for your calculations, why should you take out that unearned premium? Why shouldn't that be put in that surplus?

A. I put it in as a profit here the other morning, and you objected very strenuously.

Q. No, I am asking—I will put it another way. Don't you consider logically that if you were going to figure a return on capital and surplus, if you were going to adopt the written premium basis as the only proper basis, you should consider that the term surplus, instead of being limited by exclusion of the unearned premium, should be inclusive of it?

A. Is the unearned premium reserve a surplus that could by any means be distributed to your stockholders?

Q. Well, if you were going to adopt the written premium basis wouldn't it be subject to being distributed to the stockholders?

A. It would not.

Q. What charge is there against it which would prevent it from being at once distributed to stockholders when it is derived?

A. Exactly the same charge that there is now, under your so-called earned premium.

[fol. 2837] Q. Why. It is immediately earned when it is received, isn't it?

A. We agreed yesterday that the money belonged to the company absolutely when it was paid to them.

Q. Yes. Well, why can't they distribute money that belongs to them absolutely among the stockholders?

A. That unearned premium reserve, so-called, which by the way, appears to me to be an entirely wrong label for it, is set up, as you know, for two purposes, or at least there is defined in the Missouri statute, as a fund sufficient to safely reinsure the business, and shall be computed as follows, and goes ahead with the method in line with the annual statement; and the only other charge against that reserve is the premiums to be returned on cancelled policies. I know of no other charge that can be made against that—except those two charges. Those charges would be just the same no matter what basis you adopt, whether paid premiums or what.

Q. Well, I don't think you have yet answered by question.

A. Well, perhaps I didn't quite understand your question.

Q. If you take the position that the premiums when received upon the insurance being written immediately become the company's property without any claim of anyone against them, why would that stop a premium distribution to the stockholders if the directors saw fit; as fast as they get in premiums, pay them out to the stockholders?

A. Because, if for no other reason, the statutory requirements that they set up a reserve and carry a reserve sufficient to safely reinsure the business for the protection of their policyholder.

[fol. 2838]

Q. Well, now, you appreciate that there are many companies, of course, who have—or some companies, at least, from time to time who have business that they could not reinsure at all, don't you?

A. I don't know that, but I think likely some of them would.

Q. And you know that some can reinsure much more advantageously than others, don't you, on account of the character of their business, or could if they saw fit?

A. I suppose that would be true; there is poor business and good business in every line of business, and I suppose it would apply equally to insurance business.

Q. Well, then, how much, according to your judgment, how much is it going to cost to reinsure the business of a given company?

A. I don't know anything about it.

The Referee: Q. Do you quote that word reinsure from the statute?

A. Yes, sir.

The Referee: Q. Just for my own information: Is the word used there in the sense in which it has been used in this hearing, as in reference to ceded and assumed reinsurance? I am merely thinking we might be in confusion as to the different meanings of the same word, used in the same connection.

Mr. Hogsett: Reinsurance is provided for in this state, 3261, I think, Mr. McGee, or—16.

The Referee: I was thinking the word might be used in the statute in the sense of assured.

{fol. 2839} Mr. Barker: No, reinsurance. 22, I think.

Mr. Polonie: Here.

The Witness: Here is what I was quoting: "Premiums reserved or amount required to safely reinsure all outstanding risks." And by way of explanation I might say that back years ago that was figured on an entirely different basis. The old reports show that it gives the method in the report on the liability page. The amount of premiums on the outstanding business, and 50 per cent thereof, which was considered as an amount sufficient to reinsure the business.

The Referee: I just wanted to get the connection in which that word was used, is all. I have read the statute now.

Mr. Hogsett: The section I had reference to, which specifically provides for reinsurance, is 6226. I had that 62.

Mr. Folonie:

Q. Now, Mr. McGee, I think you stated on your direct examination in substance that the excess commissions or commissions in excess of those paid elsewhere as paid in the City of St. Louis could be conservatively figured at ten per cent. I wish you would state what information you have on which you have made that answer.

A. Well, the agency contracts of the companies are on file with the Insurance Department, and I think that estimate of ten per cent excess commission paid in St. Louis as shown by the agency contract is conservative. In fact, I doubt whether it would cover it or not.

[fol. 2840] Q. What are the grades of commissions paid elsewhere in the State of Missouri outside of the City of St. Louis?

A. 15, 20 and 25.

Q. Is it more for all companies or the same for all companies?

A. No, I think not.

Q. I mean do all the companies pay 15, 20 and 25?

A. There is a difference, I understand, between the—what are called the bureau and union companies. I don't know just what that difference is.

Q. Well, do you have any approximate notion of what it is?

A. I think it is not very great, Mr. Folonie, on the business of the state outside of the City of St. Louis.

Q. Well, do you know anything about it?

A. I do not. You will get those figures before we get through, however. They have been compiled.

Q. On what part of the business do the companies pay 15 per cent throughout the state outside of St. Louis?

A. I don't know.

Q. On what class do they pay 20 per cent?

A. I don't know.

Q. On what class do they pay 25 per cent?

A. I don't know that either.

Q. What are the proportion of business on which they pay those relative scales or rates?

A. I don't know that either.

Q. What is the difference between the bureau rate and the union rate, and to what class does the difference apply?

A. I have already told you I don't know that.

[fol. 2841] Q. Does it apply to all classes, or only to some?

A. Only to some classes, as I understand it, and I don't know which ones.

Q. Are the agents in St. Louis—what proportion of the business written in St. Louis is written by union companies and what proportion by bureau companies?

A. I have no idea.

Q. What proportion is written as between one class and the other through the remainder of the state?

A. I have no idea.

Q. What is the average of the commissions paid through the state outside of the City of St. Louis upon all business?

A. I have never been able to separate them so as to get it. The average commission including St. Louis you have shown in your exhibits.

Q. We haven't separated between St. Louis and the remainder of the state, Mr. McGee.

A. I said including St. Louis, and I have never made any figures separating the two definitely.

Q. Now, those contracts for excess commissions in St. Louis, are they contingent as far as the excess is concerned or are they direct, or both?

A. Mostly direct. There is a contingent commission, however, in most of the contracts.

Q. Do you know what that contingent amounts to?

A. No, and I have no way to arrive at that definitely.

Q. What are those contingencies upon which they are based?

A. Based on the business of the agency.

Q. On the business of the agency?

A. Yes, and we have no way of getting at that.

[fol. 2842] Q. What do you mean by business of the agency? Amount of business written, you mean?

A. No, on the profit of the agency, as I understand it.

Q. Well, you can appreciate that a large amount of business might be written and still no profit derived from the business of that agency, don't you?

A. Certainly. So I say there is no way for us to derive even approximately what that contingent commission would amount to.

Q. Have you made any calculation of that company by company or agency by agency, as to what the commission rate applied to the particular agencies amounted to?

A. I have not.

Q. Do you know the amount of the premiums in the different agencies derived for one company as distinguished from another company in the City of St. Louis?

A. I do not.

Q. Are those commission arrangements all uniform as to rate, or do they vary?

A. Vary somewhat.

Q. Are there any agencies in the City of St. Louis that receive no excess commissions?

A. None that I know of.

Q. How many agents are there in the City of St. Louis?

A. Ask me something easy.

Q. Well, about how many? A hundred or a thousand, or what?

A. Well, just at a guess, we issue, I would say, fully five thousand agent's licenses for the City of St. Louis, but that doesn't give much idea as to the number of agents, because some agents will represent only one company and some will represent a dozen or so. I would suppose——

[fol. 2843] Q. (Interrupting.) The number of agents would be less than the number of licenses?

A. Yes, and I couldn't give very much of an idea how many, but in addition to the agents there are about 1800 insurance brokers licensed in the City of St. Louis.

Q. Are those agents all of one class, or are they divided into class 1 and class 2 agents, if you know, as the business is conducted?

A. I don't know anything about how the companies class their agents, Mr. Folonie, at all.

Q. Do you know whether excess commission arrangements exist only with class 1 agents or with all agents?

A. I don't know anything about the classification at all.

Q. You don't mean for us to infer from what you have said, Mr. McGee, that an excess commission arrangement

exists with all the agents of every class who do business in the City of St. Louis, do you?

A. The St. Louis scale is above the scale of the state all the way through; five per cent.

Q. Five per cent?

A. 20, 25 and 30, instead of 15, 20 and 25. Now, whether any agents get that without any additional commission or not I don't know, but I know that many of them do get 10 per cent in addition to that.

Q. You mean a flat ten per cent, or a contingent ten per cent?

—. No, sir, not contingent; supervisory—hold on. Let's see. 5 per cent instead of 10, Mr. Folonie. Pardon me.

[fol. 2844] Q. Is that general or in excepted cases you are talking about now?

A. I think it is fairly general. And another thing. There are a considerable number of companies that pay a flat commission on everything down there, some of them as high as 30 per cent on everything.

Q. How many brokers did you say there were down there?

A. If I remember correctly, about 1,800.

Q. How many are there in the remainder of the state?

A. About 300.

Q. Business is conducted differently in the City of St. Louis than it is through the remainder of the state in that regard, then, is it not, in general?

A. I would suppose so, or else some of them would starve to death. However differently it may be conducted, it is a condition built up by the companies themselves.

Q. How do you know that?

A. They built the business, didn't they?

Q. So that everything in the business you think is of their creation, including the valued policy law of the State of Missouri?

A. I don't believe I made the statement quite that broad, Mr. Folonie. They have got guilt enough on their souls without saddling that on them.

Q. How did you arrive at your 10 per cent figure on Missouri business as an excess commission? Is it an estimation or is it a calculation? I mean did you get out the figures to show what business was written there and take the

commission existing elsewhere contract by contract and figure it, or did you just estimate it?

A. Didn't take it contract by contract, no, sir, but the figures as to the proportion of the St. Louis business were [fol. 2845] obtained by calculation; approximately 30 per cent of it is written in St. Louis. As to the 10 per cent, that was estimated, and I believe conservatively estimated.

Q. You didn't mean for the referee to draw the inference from anything you said here that any expense of the companies that you require them to report to you in your statements for charities and war work, that any of that—that any of them were included in the figures here put in evidence, did you?

A. I didn't say that they were or were not, but, Mr. Folonie, I am satisfied from the apportionment that not only those things but everything else were included in the reported items.

Mr. Folonie: I move to strike out that, "I am satisfied," after his statement, "I didn't say that they were or were not"—from there on I move that it be stricken out.

The Referee: Read the answer.

(Answer read by the reporter.)

The Referee: All of that portion of the answer following the word, "but," to the end may be stricken out.

(To which action and ruling of the referee defendant by counsel then and there at the time duly excepted and still excepts.)

Mr. Folonie:

Q. You mentioned some luncheon expenses specifically. Do you remember what company or companies that was, that you had that item?

A. Why, there were a number of them that had items in varying amounts under the head of entertainment; the two largest I think were the Aetna and the Home.

[fol. 2846] Q. Yes. Now, have you the exact language that appeared in the statement respecting those luncheons of the Home Insurance Company so you can tell us just what it did say in there on that subject?

A. No, I am not sure that I can, Mr. Folonie, but my impression is and my recollection is that it was as "luncheons and entertainment."

Q. Now, did you know that those two companies during the period of the war, which this period covers, were compelled to or did as a part of their compensation to the office employes at the home office, serve luncheons to the employes so as to lengthen their hours of labor, and that that was part of the compensation to their employes?

A. I did not; no way of telling it.

Q. Do you know anything to the contrary?

A. I do not. There is no way for me to tell anything about it that I know of. All the information I had was contained in the annual statement.

Q. Well, now, if Mr. McGee—of course you were not present at all the hearings we have had—if it appeared from the evidence in this case that those two companies did during the period of the war furnish luncheons to their employes at their home offices as part of their routine of doing business there, considering the time, the conditions of labor as they existed at that time, do you have any criticism of those expenditures as legitimate expense?

A. If those lunches were furnished to the employes as part of their compensation I would say it was a perfectly legitimate expense.

Mr. Folonie: That is all with this witness.

[fol. 2847] Redirect examination by Mr. Barker:

Q. Mr. McGee, Mr. Folonie asked you as to why the companies could not distribute their surplus and why they should not distribute it to their policyholders. In view of the fact that your testimony has developed, that the policyholders throughout the United States for this five year period received 18 per cent in cash dividends distributed to them and there was added to the surplus several millions of dollars, can you see any reason for giving them any more?

Mr. Folonie: Object to that as calling for an unwarrantable conclusion.

The Referee: Sustained.

(To which action and ruling of the referee defendant by counsel then and there at the time duly excepted and still excepts.)

Mr. Barker:

Q. And the reason they didn't distribute more is that they don't want to show such enormous earnings, is that right?

Mr. Folonie: Same objection.

The Referee: Sustained.

(To which action and ruling of the referee defendant by counsel then and there at the time duly excepted and still excepts.)

Mr. Barker:

Q. Now, Mr. Folonie has called your attention to your method of reversing the premiums for the purpose of showing and describing your contention with reference to the earned premium theory. Was it your only purpose in changing those premiums from year to year to show the [fol. 2848] working of the earned premium basis?

A. Just to show the absurdity of it and for nothing else in the world.

Q. And does it appear to you that a condition which will allow a company to take in say substantially 83 million dollars for five years, so much in one year and so much in another, that if you change the time which they get it in that it destroys the earned premium basis?

A. I don't see how it could.

Q. I don't see how it could, either.

A. Pardon me, I don't believe I got that question right. Repeat it.

Q. What does the method mean to you?

A. Will you read the question, please?

Mr. Barker: Well, strike it out and I will ask it again, to save time.

Q. Explain to the court why you prepared that tabulation and give him the benefit of your ideas regarding it?

A. Well, I prepared it merely as a comparison and illustration to show the effect of figuring—attempting to figure

profit on the earned premium basis through a period when the business was decreasing instead of increasing.

Q. Now, does the result obtained then, show that when the business is increasing and prosperous, more money being received each year, that it has a healthy and proper condition, or otherwise?

A. Well, it shows a loss when the business is increasing.

Q. When the business is good that system will universally show a loss?

A. A loss or a very slight profit.

[fol. 2849] —. Suppose you reverse it and have bad conditions, business falling off, less money being received, what will the earned premium do in that case

A. It will show a good big profit.

Q. And according to your idea is that proper?

A. No, sir, I don't see how it could be.

Q. Now, Mr. McGee, Mr. Folonie asked you about the unearned premium reserve of the companies at the end of the period. What was the unearned premium reserve as reported by the companies in this lawsuit?

A. $17,061,209.

Q. That had increased from the beginning of the period from what?

A. From $8,372,804.

Q. Tell the court what profit if any there is in that unearned premium reserve as reported at the end of this period.

Mr. Folonie: Object to assuming there is any, if the court please.

The Referee: Insert the words "if any" and answer the question.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Barker: I said "if any."

A. I would say that that entire increase in unearned premium reserve is an earning of the companies which I think might well be called a profit, which the unearned premium method of showing profits shoves over into the next five

years instead of allowing it to show in the five years where it was rightfully earned.

[fol. 2850] Q. Well, is there a profit or is there not a profit in it?

A. Profit in it.

Q. Do you know how much of a profit there is in it?

A. I would say there is about $8,000,000 and something of profit in it.

Q. Has that been credited to the State of Missouri by these insurance companies in this hearing?

A. No, sir.

Mr. Hogsett: You mean it is all profit?

A. Exactly——

Mr. Barker (interrupting): Increase, he said; not all of it.

Mr. Hogsett: That is what he says; all of the increase, every dollar. He said all of the increase.

Mr. Barker:

Q. Has that been credited to Missouri by the companies in this lawsuit as a profit?

A. No, sir, it has been deducted.

Q. Been deducted?

A. Yes.

Q. Suppose the companies were to re-insure their business, having an unearned premium at a certain time, what would they get?

A. For selling the business or reinsuring it from the unearned premium—would it give them a profit or a loss?

A. Profit of approximately 50 per cent.

Q. So that a company having 5 million dollars of unearned premiums could re-insure all of its business and make 5 million dollars by doing that, huh?

A. I didn't get that, quite.

Q. Make 5 million dollars by re-insuring 10 million dollars' worth of unearned premium business?

A. Approximately that, yes.

[fol. 2851] Q. Suppose that a company concludes to quit business, take no more insurance of any kind, but simply carry to conclusion that which it has; and it has an unearned premium reserve of a million dollars. What would it get

from that million dollars by taking no new business but carrying what it had to a conclusion, what profit, if any, would there be in that?

A. Well, in that event they would have to pay the losses accruing under that business.

Q. Anything else?

A. They would have to pay some expense of conducting the business to the conclusion, and it would be hard to tell what that would be. Of course, there would be no acquisition expense in it, which is the largest part of the expense of the company.

Q. Are all of the expenses paid against that unearned premiums—the acquisition cost of the business and so forth?

A. Acquisition cost is all paid.

Q. Now, Mr. Folonie asked you——

The Referee (interrupting): Do you mean that not all of the expense is paid but only the acquisition cost?

A. This was on the supposition, Your Honor, that the company stopped writing business and went to liquidating; then necessarily there would be additional expense there in winding up that business, but any acquisition cost would of course be eliminated.

The Referee: Yes. Proceed.

Mr. Barker:

Q. Now, Mr. Folonie asked you about investments and about the report on the annual statement blank. Will you explain to the court the difference between the annual statement blank or the financial blank, as I call it, and the under- [fol. 2852] writing report by classes blank, which is filed with your department?

A. Well, you are referring to the part that Mr. Folonie was questioning me about, there on——

Q. No, withdraw it. Is there any difference between the annual statement and underwriting report by classes blanks?

A. Yes, sir, a very considerable difference.

Q. What is it?

A. The annual statement exhibit is made on an earned premium basis.

Q. How is the underwriting report by classes made?

A. On a paid basis.

Q. Which one of the two blanks does the Insurance Department consider in fixing rates?

A. The report of underwriting experience by classes. That is the sole purpose of that report.

Q. And that is on the paid basis, as you contend for?

A. Yes, sir.

Q. And it is the only report you have thereon which you can figure the underwriting activities at all, is it not?

A. Yes, sir. It is the only one that shows the correct condition.

Q. And shows expenses and losses and premiums?

A. Yes, sir.

Q. Now, Mr. McGee, Mr. Folonie asked you regarding the investments. The underwriting end of the business secures the money in the first instance, does it?

A. Yes, sir.

Q. All of the money coming into the insurance company comes from the policyholders in the first instance?

A. Except, of course, the capital.

[fol. 2853] Q. Yes, sir. We are taking the business after the company is organized.

Mr. Folonie: And surplus contributed.

The Witness: Most of the surplus comes from there, too.

Mr. Barker:

Q. The unearned premium reserve comes from the policyholders?

A. Yes, sir.

Q. Now, after the underwriting department gets that money it pays all the expense for its acquisition and for its handling, does it?

A. Yes, sir.

Q. Then there comes a time when what it is then is net; all expenses having been paid against it?

A. Yes, sir.

Q. Now, it could take that money over to a savings bank itself and receive $3\frac{1}{2}$ per cent for it, could it not?

A. Yes, sir; in some instances four.

Q. $3\frac{1}{2}$ to 4 per cent, it could receive for it?

A. Yes.

Q. Instead of that it receives it in its right hand and hands it over to its left hand, known as the investment department, does it?

A. Yes, sir.

Q. And the investment department then invests it in different forms of securities?

A. Yes, sir.

Q. Does the investment department credit the underwriting department or pay it anything for this net money which it takes from it?

A. No payment of the sort appears in any statement that I know of.

Q. Well, does it appear inequitable to you that the underwriting end would get all the money, pay all the expenses against it, and have it net, and then instead of putting it in [fol. 2854] a savings bank where it would get 3½ to 4 per cent for it, that it would gratuitously give it to the other department in the business known as the investment department and receive nothing for it?

A. It seems an unreasonable proceeding.

Q. Now, Mr. Folonie asked you in case those investing these funds secured from the underwriting department and for which they paid the underwriting department nothing should make bad investments and that money should be lost—whether or not you thought the policyholders of Missouri should make up that loss. Do you recognize that those handling funds in that condition are under the law required to invest them safely and economically and to be responsible for their management in handling?

Mr. Folonie: I disclaim such part of the question as attributed to me in the form he has asked it.

Mr. Barker:

Q. Did you answer it?

A. I did not. Mr. Folonie was trying to. It certainly charges them with the reasonable care in handling the business and a conservative management of it.

Q. Can you conceive of a condition, from your knowledge and experience in the business for the last twenty years, of the company's losing all of their investments, as Mr. Folonie has suggested?

A. No, I think not. I never heard of one that did.

Q. That is a pure, purely chimerical, then?

A. Yes.

Q. These companies during these five years seem to have made on their investments, do they not?

A. A very considerable sum.

[fol. 2855] Q. How much did they make on their investments?

A. $138,000,000, net.

Q. And we are just considering this five year period from '17 to '21, aren't we?

A. That is all we are figuring on.

Q. Now, then, Mr. Folonie asked you as a lawyer if in case of losing all this money by investment, if the policyholders of Missouri would have to pay the losses rather than the stockholders of the corporation. Are you familiar with the liability of stockholders of corporations, as a lawyer?

A. No. I make no pretense to being a lawyer.

Q. You don't know whether there is a single liability or a double liability against stockholders, do you?

A. I do not.

Q. You are not qualifying as a lawyer with reference to the rights of the stockholders?

A. No, sir.

Q. Now, then, Mr. McGee, Mr. Folonie asked you this morning in case of a policy written and a cancellation about the company returning a pro rata part of the premium back to the policyholder. Are you familiar with the fact that in case of cancellation the company recovers from the agent his pro rata part of that commission also?

A. I have no definite knowledge of that.

Q. You are not familiar with that; you haven't read the testimony in this case on that?

A. No. As Mr. Folonie suggested a little while ago, there were several of these hearings that I did not attend.

Q. Now, Mr. McGee, for the purpose of this lawsuit only and accepting premiums, losses and expenses as reported by the companies in this lawsuit, and considering what you [fol. 2856] call and what Mr. Folonie calls the excess commissions paid in the City of St. Louis, which you have estimated at 10 per cent, and after deducting them from the expense report, what underwriting profit did these com-

panies make in Missouri for the five year period from '17 to '21 inclusive on the capital which you have apportioned to Missouri?

Mr. Folonie: Object to it as an untenable hypothesis, contrary to the facts and incompetent.

The Referee: Overruled.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Barker:

Q. Considering the St. Louis excess commissions alone, give me the amount and then the percentage as against the capital.

A. Underwriting profit of $5,837,329.

Q. Now, that apportioned against the capital which you have apportioned to Missouri represents what profit made in Missouri for those years?

A. $32.76.

Q. Your calculations, in answer to the last question you have prepared your figures on Exhibit 2027?

A. Yes, sir.

Q. Now, then, Mr. McGee, for the purpose of this lawsuit only, and accepting the premiums, losses and expenses as reported by these companies in this lawsuit, and considering the effect of the 15 per cent increase granted to these companies in January, 1920, what underwriting profit did these companies make in Missouri for the five year period in question from 1917 to 1921 inclusive on the capital ap- [fol. 2857] portioned to Missouri as you have apportioned it?

Mr. Folonie: Objected to as incompetent and upon a hypothesis not existing in fact.

The Referee: Overruled.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

A. $11,088,943, which is equal to 72.06 per cent on capital.

Q. Apportioned to Missouri?

A. Yes, sir.

Q. In answering the last question you refer to the totals prepared on Exhibit No. 2028?

A. Yes, sir.

Q. Now, then, Mr. McGee, for the purpose of this lawsuit only and accepting the premiums, losses and expenses as reported by these companies in this lawsuit, and considering the increase which was granted these companies in January, 1920, and considering what you call the excess commissions paid in the City of St. Louis, what underwriting profit did these companies make in Missouri for the five years in question from 1917 to 1921, inclusive, on the capital which you have apportioned to Missouri?

Mr. Folonie: Objected to as incompetent and immaterial, because any allocation—supposed allocation—of capital is improper and an illogical basis.

The Referee: Overruled.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

[fol. 2858] A. $13,340,780, which is equal to 86.69 per cent on capital apportioned to Missouri.

Mr. Barker:

Q. And this experience in answer to the last question is shown on Exhibit 2029?

A. Yes, sir.

Q. Now, then, Mr. McGee, for the purpose of this lawsuit only and accepting the premuims, losses and expenses as reported by these companies in this lawsuit, and considering the amount of interest earnings which you have apportioned to Missouri, what underwriting profit did these companies make in Missouri, for the five years in question from 1917 to 1921, inclusive, on the capital which you have apportioned to Missouri?

Mr. Folonie: We make the same objection, if the court please, and that it is cumulatively impossible hypotheses.

The Referee: Overruled.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Barker:

Q. Just considering the interest on earnings.

A. $3,456,388—wait a minute. You wanted that as on the basis of the last——

Q. Interest earnings in addition to the underwriting profits. Have you got a total on that?

A. That is included in the other total shown there, in Exhibit 2029.

Q. Well, I will withdraw that question and ask it again. This will get it, Mr. McGee: What underwriting profit on the same basis did you report the companies had earned in Missouri, accepting the figures on premiums, losses and ex- [fol. 2859] penses for this five year period?

A. Considering the increase, decrease, and—you see, I have four sets of figures here.

Q. Well, withdraw it, Dick, and I will ask it again (addressing reporter).

As reported by the companies in this lawsuit, what was the total amount of premiums which they reported?

A. $83,502,181.

Q. Now, accepting those figures, and their figures they reported for losses and expenses, what underwriting profit did you figure they made in Missouri?

A. $3,341,124.

Q. Now, what investment earnings did you apportion to Missouri for this period?

A. $4,216,072.

Q. Those two items added together represent what profit on the apportioned capital in Missouri for the five year period in question?

Mr. Polonie: Object to the characterization of that figure, if given, as proper.

The Referee: Overruled.

Mr. Polonie: Exception.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

A. $7,557,196.

Mr. Barker:

Q. And what profit, or percentage does that show, as apportioned against the capital?

A. 42.41 per cent.

Q. Now, then, Mr. McGee, accepting the premiums, losses and expenses as reported by these companies in this lawsuit [fol. 2860] and considering, if any, the effect of the 15 per cent increase granted in January, 1920, and considering what you call the excess commissions paid in the City of St. Louis, and deducting them from the expenses as reported, and considering the interest earned on investments, which have apportioned to Missouri, on that basis what underwriting profit as against the capital which you have apportioned to Missouri did these companies earn for the five years in question from 1917 to 1921 inclusive?

Mr. Folonie: I object, if the court please, on the ground that it is incompetent and that such evidence, if permitted, would deprive the plaintiffs and each of them of their constitutional rights and the guaranties made them by the Fourteenth Amendment to the Constitution of the United States and the constitution of the State of Missouri, and would be a taking of their property without due process of law, denying them the equal protection of the laws.

The Referee: General, does that question there embrace profits or earnings both from the investment and from the underwriting branches of the companies' business?

Mr. Barker: They embrace profits on both, including all that is.

The Referee: Read the question, Mr. Blume, please.

(Question read by the reporter.)

Mr. Barker: The underwriting appears to be $3,300,000, and this is simply added to that.

[fol. 2861] The Referee: And considering it all as if it all arose from underwriting?

Mr. Barker: Well, that is our contention.

The Referee: Well, I say that is the theory of your question?

Mr. Barker: Yes. Of course, it all comes originally from underwriting, but we are offering our proof on the different theories.

The Referee: I understand. The objection is overruled.

Mr. Folonie: Exception.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Barker:

Q. Now you may answer that question, Mr. McGee.

A. $17,746,956, which is equal to 99.6 per cent on capital.

Mr. Folonie: That's doing pretty good. You haven't got over 100 per cent, though, yet.

Mr. Barker: That is what you made, though.

The Witness: Just give me one cent more and I will get over the hundred.

Mr. Barker:

Q. The answer just made is based upon exhibit, also 2029?

A. Yes, sir.

Q. Now, Mr. McGee, your answer to the last question was on all business in Missouri, both regulated and non-regulated. Now limiting your answer to the regulated business in Missouri and answering the same question which was just asked, considering all of the items which I have [fol. 2862] enumerated, and purely on regulated business in Missouri, what profit did the companies make in Missouri for the years 1917 to 1921 inclusive and apportioned against their capital which you have apportioned to Missouri?

Mr. Folonie: Same objection, respecting the invasion of our constitutional rights which I have previously called to the court's attention in greater detail. It is not necessary to reiterate it, is it, if the court please?

The Referee: Not at the present time. Overruled.

Mr. Folonie: Exception.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

A. $16,797,168, equal to 109.15 per cent on capital allocated to Missouri. Just let me explain for a moment there. The other profit given was somewhat larger than this, the percentage smaller. The premiums differ, which makes a different allocation of capital, and that will explain the difference.

Mr. Barker: You may inquire, Mr. Folonie.

Recross-examination by Mr. Folonie:

Q. The companies made enough money, then, in the State of Missouri, that they could give away their policies and still do pretty well, didn't they?

A. Yes. I think we are mild in asking them to only give us ten per cent of it.

Q. So that by reduction of your—by the reduction order they would still make, according to your last figures, 100 per cent on their business?

A. No, not quite.

[fol. 2863] Q. Well, approximately?

A. No, that would cut it down to about sixty.

Q. Now, if instead of excluding the excess commissions in the City of St. Louis you just excluded all the commissions in the state, it would show still more profit, would it not?

A. Yes. If we could just get rid of the expense we could show you had a good profit.

Q. Did you ever see a re-insurance contract made between two insurances companies, one re-insuring the other?

A. Well, I will say I have never seen them—I may possibly have seen one at some time when it was filed with the department there, one company re-insuring the business of another when it was being wound up, but never examined one.

Q. Did you ever know of a single contract of re-insurance re-insuring part of the business of a company which was continuing in business where a commission of fifty per cent was ever paid?

A. I did not, and my answer of fifty per cent was not on a company continuing in business at all.

Q. Your fifty per cent was designed to relate to a company which quit business and turned over all its business, including its agency plant, to a new company, wasn't it?

A. Not necessarily including agency plant, because that has a value, you know.

Q. Did you ever know of the reinsurance of all of a company's business where agency plants were not taken over where any such commission as fifty per cent was ever paid?

A. I am not familiar with reinsurance contracts, Mr. Folonie, in detail.

[fol. 2864] Q. I am asking you if you ever knew of a single contract where one company reinsured the business of another in part or in whole where agency plants were not taken over where a commission of as much as fifty per cent was paid.

A. I have already said that I never examined one of the contracts in my life, so I can only answer that question again, "No."

Q. Now, you know, don't you, Mr. McGee, that when a business is wound up and a company quits doing business that by reason of having no written premiums against which to allocate any of its expenses that the ratio of its expense in winding up its business is very greatly higher than that of a going company; isn't that so?

A. Not necessarily.

Q. And don't you know the expense of winding up a company that ceases business as allocated against their premiums, which consist solely of those which are unearned at the time they cease business, invariably exceed 100 per cent?

A. Don't know anything about it, because I have never made such an allocation and never heard of one before. I suppose——

Q. Do you know anything about the expense ratio of a company which ceases writing business and proceeds to wind up its business by running it off?

A. I do not.

Mr. Folonie: That is all with this witness. No, pardon me. There is something here I overlooked, if I may be pardoned.

Q. In calling attention to your answer that the underwriting experience blanks were upon a written premium and a paid loss and expense basis, I will ask you whether [fol. 2865] it is not a fact that in the year 1919 your underwriting experience by classes blank called for losses upon an incurred basis?

A. It did not.

Q. I show you a 1918 underwriting experience by classes blank——

A. (Interrupting.) You don't need to show it to me, because I will admit they are printed that way. They were printed that way, and the ones sent out to the companies were changed in ink; to paid, and you will notice that this is gross over here, which was changed to net.

Q. Yes, but isn't it a fact that the word incurred is in there and was left in there?

A. No, sir, except for some extra copies that the companies called for later on that were perhaps sent out not changed. They have made no reports to us on a gross or incurred basis.

Q. Now, as bearing on the question as to whether only the written basis was considered I will ask you whether on each of these blanks you did not ask for interest on the unearned premiums on Missouri business on each one of them?

A. Yes, sir.

Mr. Folonie: That is all with this witness.

Redirect examination by Mr. Barker:

Q. Now, Mr. McGee, the percentages of profit or earnings of these corporations as you have testified to for the five years in question, 1917 to 1921, inclusive, were they on a five year basis as reported by you or a one year basis?

A. They are figured on the five years there, but that is an annual return. As I have tried to explain to Judge Williamson yesterday, the totals were used, which gives this as an annual earning.

[fol. 2866] Q. And you mean it to be, from your testimony on the report which you have made, as an annual earning?

A. Yes, sir.

Q. Now, then, Mr. McGee, in your testimony, and in reaching the earnings which you have stated, you have computed the reported underwriting profits on the written premium basis as reported by the companies in this lawsuit?

A. Yes, sir.

Q. And adding to that in order to get your result?

A. Yes, sir.

Mr. Barker: We offer in evidence Exhibits Nos. 2027, 2028, and 2029, as identified by the witness.

The Witness: Do you want copies of them, Mr. Folonie?

Mr. Folonie: Yes, I guess you better.

Mr. Barker: Give them all copies.

Mr. Folonie: We object to these exhibits and each of them upon the ground that they are upon a basis not recognized by law, and are incompetent because of the fact that the same and each of them purport to include investment profits, and in seeking to divert the supposed profits of the plaintiff upon an activity entirely distinct from that here proper to be considered or under contemplation; that the same are invasive of the rights of the plaintiffs as guaranteed by the constitution of the United States, the fourteenth amendment thereof, and the constitution of the State of Missouri, deprive the plaintiffs and each of them of their property without due process of law if such method be adopted, deny the plaintiffs and each of them the equal protection of the laws; that the undertaking in Exhibit No. [fol. 2867] 2027 to exclude certain expenses of the plaintiffs in fact by them had and paid is subjected to the same objections and is unwarrantable in law and contrary to the intent and meaning of the statutes of the State of Missouri governing this subject; that the same in each event in adding to the underwriting profit the supposed investment profit is subject to the said constitutional objections and each of them; that the effort to introduce herein the profits and gains made by the plaintiffs upon their investments and business conducted outside of the State of Missouri are in contravention of such constitutional guaranties and in addition are in conflict with the statutes of the State of Missouri, which provide that the right of the Superintendent of Insurance to regulate rates and to order reductions shall arise only in that event where the companies have made an unwarrantable profit upon their business within the

State of Missouri; that this contemplates profits beyond the boundaries of the state and not made within the State of Missouri and therefore is in contravention of the provisions of the statute; upon the further ground that the statute of the State of Missouri authorizing any regulation or control of rates, if so construed as to permit of the invasion of the rights of the plaintiffs as here protested against, would be unconstitutional, and such statutes and each of them are unconstitutional if the same be given such effect. On those grounds we object to the exhibits and each of them.

The Referee: Overruled.

[fol. 2868] Mr. Folonie: Exception.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

(Which said documents, so offered, introduced and admitted in evidence as Defendant's Exhibits 2027, 2028, and 2029, respectively, are in words and figures as follows, to-wit:)

[fol. 2869] **Result of Excess Commissions Paid in St. Louis**

The insurance written by fire insurance companies in St. Louis in the five years, 1917 to 1921, inclusive, represented 29.9% of the total Missouri business.

Total business in Missouri was 83,502,181 29.9% = 24,967,715—St. Louis business.

Regulated business in Missouri was 71,969,502 29.9% = 21,518,971—St. Louis business.

On St. Louis business the companies paid agents' commissions which were approximately 10% in excess of agents' commissions paid elsewhere in the State.

This excess commission on the basis of total business amounted to 2,496,715, and on the basis of regulated business amounted to 2,151,897.

Total Business:

Net Premiums			83,502,181		No Capital	17,816,887
Losses Paid		47,057,423			" Surplus	36,842,220
Expenses Paid	33,103,634				" C. & S.	54,659,107
Deduct excess com. paid St. Louis	2,496,715					
Actual Underwriting Expense		30,606,919				
Total Losses and Expenses			77,664,342			
Underwriting Profit			5,837,839	= 32.76% on Capital, or 10.68% on C. & S.		
Investment Profit			4,216,072	= 23.66% " " " 7.70% " "		
Total Profit			10,053,911	= 56.42% " " " 18.47% " "		

Regulated Business:

Net Premiums			71,969,802		No Capital	15,388,250
Losses Paid		39,108,388			" Surplus	31,812,135
Expenses Paid	28,532,083				" C. & S.	47,200,385
Deduct excess com. paid St. Louis	2,151,897					

Actual Underwriting Expense	.....	26,380,186		
Total Losses and Expenses	.....	.....	65,488,574	
Underwriting Profit	.....	.....	6,481,228	= 41.33% on Capital, or 31.73% on C. & S.
Investment Profit	.....	.....	3,456,338	= 22.46% " " " 7.32% " "
Total Profit	.....	.....	9,937,566	= 63.79% " " " 21.05% " "

[fol. 2870] Showing Effect of Increase and Decrease on Basis of Regulated Business

	1920 Prems.	1921 Prems.	5 Yr. Total Prems.
	21,895,059.00	19,945,062.00	83,502,181.00
Deduct Non Regulated Business	3,431,907.00	3,432,502.00	11,532,379.00
Regulated Business	18,463,152.00	16,512,560.00	71,969,802.00
Prems. 1920	.....	.....	18,463,152.00
71% of same	.....	13,108,838.00	.....
15% of 13,108,838	1,966,325.00	.....	.....
21% of increase effective in 1920	412,928.00	.....	.....
Prems. 1921	.....	.....	16,512,560.00
71% of same	.....	11,723,719.00	.....
15% of 11,723,719.00	1,758,587.00	.....	.....
28% of increase effective in 1921	492,404.00	.....	.....
Prems.—5 yrs. 17-21	.....	.....	71,969,802.00
71% of same	.....	51,098,559.00	.....
15% of 51,098,559	7,664,784.00	.....	.....

Result of Excess Commissions Paid in St. Louis—Continued

	1920 Premiums	1921 Premiums	5 Yr. Total Premiums		
Applying increase 15% on 71% of Business					
Premiums—1917 1921			71,000,802.00		
Increase effective in 1920	412,328.00				
" " " 1921	492,404.00				
Total Increase effective in 20-21—deduct			905,332.00		
			71,904,570.00		
Add 15% increase on 71% —51,088,570			7,664,784.00		
Premiums 17-21 including rate increase			79,729,354.00		
Losses Paid	39,108,388.00				
Expenses Paid	28,532,083.00				
Total Loss & Expense			67,640,411.00		
Underwriting Profit			11,088,943.00 = 72.05% on Capital, or 23.49% on C. & S.		
Investment Profit			3,456,338.00 = 22.46% " " " 7.32% " "		
Total			14,545,281.00 = 94.52% " " " 30.81% " "		
Applying Decrease of 10%:					
Premiums 17-21 including former increase			79,729,354.00		
Deduct 10%			7,872,935.00		
Premiums after 10% reduction			70,856,419.00		

No Capital 15,388,250.00
" Surplus 31,812,135.00
" C. & S. 47,200,385.00

Losses Paid	39,108,388.00						
Expenses Paid	28,532,083.00						
Total Loss and Expenses			67,640,411.00				
Underwriting Profit			3,216,008.00	= 20.9 % on Capital, or	6.81% on C. & S.		
Investment Profit			3,456,338.00	= 22.46% " " "	7.32% " "		
Total Profit			6,682,346.00	= 43.36% " " "	14.13% " "		

[fol. 2871] Result of Excess Commissions Paid, Increase and Decrease of Rates on Total Business and on Regulated Business

Total Business—Increase in rate of 1920:

Premiums including rate increase made in 1920			91,195,226		No Capital	17,816,888	
Paid Losses	47,057,423				" Surplus	36,842,220	
Paid Expenses less excess com. paid	30,696,919				" C. & S.	54,659,107	
Total Losses and Expenses			77,994,342				
Underwriting Profit			13,530,884	= 75.94% on Capital, or	24.75% on C. & S.		
Investment Profit			4,216,072	= 23.66% " " "	7.70% " "		
Total Profit			17,746,956	= 99.6 % " " "	32.54% " "		

Total Business—Decrease in rates of 10%:

Premiums less 10%			82,075,704				
Paid Losses	47,057,423						
Paid Expenses less excess com. paid	30,696,919						
Total Losses and Expenses			77,994,342				
Underwriting Profit			4,411,262	= 24.7 % on Capital, or	8.07% on C. & S.		
Investment Profit			4,216,072	= 23.66% " " "	7.70% " "		
Total Profit			8,627,434	= 48.36% " " "	15.86% " "		

Result of Excess Commissions Paid in St. Louis—Continued

Regulated Business—Increase in rate of 1920:

Premium including rate increase made in 1920	.....	.....	78,729,354		No Capital	15,388,250
Paid Losses	39,108,288				" Surplus	31,812,135
Paid Expense less excess comm. paid	26,380,186				" C. & S.	47,200,385
Total Losses and Expenses	.....	.....	65,488,574			
Underwriting Profit	.....	.....	13,340,780	= 86.69% on Capital, or 28.26% on C. & S.		
Investment Profit	.....	.....	3,456,388	= 22.46% " " " 7.32% " "		
Total Profit	.....	.....	16,709,168	= 109.15% " " " 35.58% " "		

Regulated Business—Decrease in rate of 10%:

Premiums less 10%	.....	.....	70,756,419			
Paid Losses	39,108,288					
Paid Expenses less excess comm. paid	26,380,186					
Total Losses and Expenses	.....	.....	65,488,574			
Underwriting Profit	.....	.....	5,267,845	= 34.88% on Capital, or 11.37% on C. & S.		
Investment Profit	.....	.....	3,456,388	= 22.46% " " " 7.32% " "		
Total Profit	.....	.....	8,824,233	= 57.34% " " " 18.69% " "		

[fol. 2872] (Whereupon an adjournment was taken until 10:00 o'clock a. m. of the following day, the same being Friday, the 9th day of May, 1924, at which time parties reconvened at the same place and the following proceedings were had:)

Friday Morning Session, 10:00 o'clock a. m., May 9, 1924

E. G. McGee, recalled to the stand for further examination on behalf of the defendant, having been previously duly sworn, testified further as follows:

Redirect examination (continued) by Mr. Barker:

Q. Now, Mr. McGee, Mr. Folonie cross-examined you from a pamphlet or book which he used, styled "Fire underwriting profits as relating—as related to experience rate-making," by Mr. E. G. Richards, author, published [fol. 2873] in New York in 1924. I will ask you if you agree with this theory of Mr. Richards' as related by him on page four:

"The use of present rate-making systems, all of which are based upon estimates and are unsupported by any data of actual experience costs, will not enable the companies or the commissioners to adjust rates of insurance in the United States up or down to any agreed level of profit."

Do you agree with him on that?

Mr. Folonie: We object, if the court please, to the question as leading and suggestive.

A. Yes, sir.

Mr. Folonie: And on the ground that it is hearsay and seeks to inject the supposed testimony of some person not present, by reference.

The Referee: Overruled.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Barker: I made the same objection to Mr. Folonie's attempt.

Mr. Hogsett: There is some distinction.

The Referee: Overruled.

Mr. Barker:

Q. Do you agree with the statement?

A. Yes, sir, I do.

Q. I will ask you if you further agree with Mr. Richards——

Mr. Folonie: Object to reiteration by reading from a book to the witness as improper practice and leading and [fol. 2874] suggestive and improperly putting the subject matter of a printed document not prepared by the witness into the record.

The Referee: I think the question is open to being leading.

Mr. Barker: I am just simply taking parts of the questions which Mr. Folonie did not ask, and the witness certainly has an opportunity where Mr. Folonie takes a book and says "Do you agree with this?" and then reads a half a sentence—I certainly have the right to complete the sentence and show the meaning of it.

Mr. Hogsett: You are not doing that.

Mr. Barker: Yes, I am. Mr. Folonie, on the other one, used "second" and I am taking the other one, right on the other side.

The Referee: I think it would be easier to ask your question in such form that it would not be leading.

Mr. Barker: Well, I don't know how.

The Referee: Well, if a suggestion will expedite matters, you may ask the witness whether or not he agrees with the following statement, and read it, if you like.

Mr. Barker: That was my exact question, I thought. I will ask it again.

Q. Still referring to this book of Mr. Richards, which Mr. Folonie cross-examined you on yesterday, I will ask you whether or not you agree with this statement of Mr. Richards as found on page 5:

"The terms 'earned premiums' or 'unearned premiums' as generally used are misleading because all premiums are [fol. 2875] the property of the companies, even though the insurance contracts for which they were paid have not terminated."

A. Yes, sir, I agree with that.

Mr. Folonie: Same objection.
The Referee: Overruled.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Barker:

Q. I will ask you whether or not you agree with this statement of Mr. Richards' from the same book which Mr. Folonie cross-examined you from, as found on page 19:

"Reduction in the cost of insurance must come chiefly through a decrease in fire loss, but the measure of that relief will be greatly increased under a system of experience rate-making which co-ordinates in the loss cost, the cost of moral hazard if any (whether latent or actual), with the cost of physical hazard, and added thereto the true expense cost and the standard ratio of profit."

Mr. Folonie: We object as leading and suggestive and calling for hearsay, and seeking to inject the contents of a writing produced by another and not the production of the witness; and as incompetent.
The Referee: Overruled.
(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

[fol. 2876] A. I certainly agree with it wholly.

Mr. Barker:

Q. You think the moral hazard, proper inspection and things should be considered in making rates?
A. Yes, sir, I do, most certainly.
Q. I call your attention to Exhibit 2030, is this the same exhibit which Mr. Folonie cross-examined you on yesterday as showing the reversal of the premiums when received, but including the total amount for the five-year period?
A. Yes, sir.

Mr. Barker: I offer Exhibit No. 2030.
Mr. Folonie: Objected to as incompetent and immaterial.

The Referee: Overruled.
Mr. Folonie: Exception.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

(Which said document, so offered, introduced and admitted in evidence as Defendant's Exhibit 2030, is in words and figures as follows, to-wit:)

[fol. 2877] Illustration of method of arriving at underwriting profit, using earned premiums, incurred losses and incurred expenses for 1917 to 1921 inclusive, as reported by the companies, showing results with volume of business increasing, volume decreasing and volume increasing and decreasing from year to year.

		Unearned premiums at beginning of period.	Written premiums.	Unearned premiums at end of period.	Earned premiums.	Incurred losses.	Incurred expenses.
Volume of business increasing.	1917	8,372,804.00	11,879,758.00	9,555,911.00	10,696,651.00	7,377,076.00	4,560,417.00
	1918	9,555,913.00	13,989,460.00	10,612,155.00	12,553,216.00	8,471,414.00	5,311,757.00
	1919	10,612,159.00	16,172,844.00	12,628,000.00	14,156,994.00	9,649,144.00	6,525,372.00
	1920	12,628,025.00	21,805,057.00	16,737,780.00	17,785,283.00	12,905,448.00	8,614,060.00
	1921	16,737,807.00	19,945,062.00	17,061,300.00	19,621,600.00	14,189,582.00	8,553,700.00
			83,502,181.00		74,813,816.00	53,593,664.00	33,604,414.00
"A"			Deduct Losses and Expenses		82,198,078.00	Add Losses	48,593,664.00
			Net Underwriting Loss		—7,384,262.00	Losses and Expenses	82,198,078.00
Volume of business decreasing.	1917	17,061,300.00	19,945,062.00	16,737,780.00	20,268,482.00		
	1918	16,737,780.00	21,805,057.00	12,628,000.00	26,004,837.00		
	1919	12,628,000.00	16,172,844.00	10,612,155.00	18,186,688.00		
	1920	10,612,155.00	13,989,460.00	9,555,911.00	14,995,704.00		
	1921	9,555,911.00	11,879,758.00	8,373,804.00	13,062,865.00		
			83,502,181.00		92,190,586.00		
"B"			Deduct Losses and Expenses		82,198,078.00		
			Net Underwriting Profit		9,992,508.00		

Illustration of Method of Arriving at Underwriting Profit—Continued

		Unearned premiums at beginning of period.	Written premiums.	Unearned premiums at end of period.	Earned premiums.	Incurred losses.	Incurred expenses.
Volume of business increasing and decreasing from year to year.	1917	10,612,159.00	16,172,844.00	12,628,000.00	14,156,504.00		
	1918	12,628,000.00	21,805,057.00	16,737,780.00	17,785,277.00		
	1919	16,737,780.00	13,000,400.00	10,612,155.00	19,735,094.00		
	1920	10,612,155.00	19,945,022.00	17,081,200.00	13,476,078.00		
	1921	17,081,200.00	11,879,758.00	8,372,758.00	20,588,200.00		
			83,502,181.00		85,741,182.00		
			Deduct Losses and Expenses		82,198,078.00		
			Net Underwriting Profit		3,543,104.00		

[fol. 2878] Recross-examination by Mr. Folonie:

Q. Have you informed yourself about rate making since yesterday, Mr. McGee, so that you are informed any differently now than you were then?

A. No, sir. I tried absolutely to forget this last night.

Q. What is the standard advocated by you and Mr. Richards for the measurement of the moral hazard as an ele-
[fol. 2879] ment in rating making?

A. I have no standard. I don't know whether Mr. Richards has or not.

Q. If a man has one fire and another man has two fires, what difference in their rate would you make under your system of injecting the moral hazard into rate making?

A. I am not pretending to say, Mr. Folonie.

Q. What difference would you make between one who had a fire clearly incendiary, one who had one probably incendiary, and one who had one possibly incendiary—what relation would they bear to each other as to the difference in rates?

A. I have no opinion to offer with regard to it at all.

Q. Have you any particular standard in mind, or that you have ever seen of anybody else, for measuring the moral standard in rate making so as to scientifically incorporate it into the rates to be charged for fire premiums?

A. I have never made any special study of rate making in any shape or form.

Q. No matter about that, but have you any standard that you have evolved yourself or that you have ever read or heard of whereby the moral standard comparatively of different persons might be adjudged so as to be incorporated into a rate?

A. I have not.

Mr. Folonie: That is all.

Mr. Barker: That is all.

(Witness excused.)

[fol. 2880] Ben C. Hyde, called as a witness in his own behalf, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. Barker:

Q. Will you give the stenographer your name, please?
A. Ben C. Hyde.
Q. Where do you live, Mr. Hyde?
A. Kansas City, Missouri.
Q. What official position, if any, do you occupy in Missouri?
A. Superintendent of Insurance.
Q. How long have you been Superintendent of the Insurance Department of Missouri?
A. Since the fall of 1921, I think.
Q. Have you been exclusively engaged in that business in Missouri since then?
A. Yes, sir.
Q. Your offices are in the Capitol at Jefferson City?
A. Yes, sir.
Q. You have charge of that department as Superintendent of Insurance?
A. Yes, sir.
Q. Have you had occasion to make a study of insurance rates in Missouri?
A. Yes, sir.
Q. Have you read different books and pamphlets on the subject?
A. Yes, sir.
Q. Have you made tabulations and calculations and had them made in your department for you?
A. Yes, sir.
Q. And on those you ordered the reduction of ten per cent in this case?
A. Yes, sir.
Q. Now, Mr. Hyde, detail to the court the method which your department has of attempting to check the reports of [fol. 2881] premiums as reported by the companies in this suit.
A. The department has no check on premiums. The premiums are reported as a whole and there is no possible way for us to verify them.
Q. Why?

A. In the first place, the companies examination by the state of domicile goes into their business as a whole. They have no check on the reports made to the individual states. Those items have not been checked. I sent out two examiners, I think they have been working about five months; on the companies that we have examined, we found that it is impossible to check premiums for the reason that the original documents, meaning the daily report, in many instances had been destroyed; one of the companies having only a part and the other company a few more. Making a check from the original document is impossible.

Q. What are the daily reports?

A. The daily report is a copy of the policy that goes to the company from the agent.

Q. Is it essential to have those accessible in case you attempt to check the premiums in the office of the companies?

A. That is the original source of information. The daily reports.

Q. Without the daily report, in case it is destroyed can you check them at all?

A. Of course, the daily report is entered on a ledger, but the original document is gone and you have no authentic check.

Q. What examination have you made with reference to policies being issued for a certain rate, in some instances below the schedule rate, and cancellation occurring there-[fol. 2882] after? Has your department investigated that?

A. That is, some examiners on the companies they examined found in many instances——

Mr. Hogsett (interrupting): That is hearsay. We object to that.

The Witness: No, the department furnished these.

Mr. Hogsett: Q. You made none of these examinations yourself?

The Witness: Made under my direction.

Mr. Hogsett: Q. You were not within 500 miles of the places where the men were making the examination, were you?

A. Not continuously; I was there part of the time.

Q. Did you make any part of the examination yourself?

A. No.

Q. You are testifying, then, to what your examiners told you about it?

A. What they reported.

Mr. Hogsett: Yes. We object to it as hearsay.

The Referee: I think that objection should be sustained.

Mr. Barker: It looks to me as though that is the only way the department could speak. If it be contended that the superintendent had to make the examinations, of course, they could never be made.

Mr. Hogsett: Let your men who made it testify. That might be one way.

Mr. Barker: Our idea is this head of the department may testify to any report of any employes working under him. [fol. 2883] The Referee: I think that is erroneous. Sustained.

(To which action and ruling of the referee, the defendant, by counsel, then and there at the time duly excepted, and still excepts.)

Mr. Barker: Very well.

Q. Do you know, Mr. Hyde, from your official position as Superintendent of the Insurance Department and from the examinations which you have made of the records in your department, anything about the cancellation of policies aside from any conversation you had with any one about it? Can you explain the insurance method of cancellation?

A. Well, on flat cancellations, usually where a policy has run anywhere from two or three days to three of four months and be cancelled flat, means that they cancel without any premium whatever being paid them. The information I have in reference to the extent of these practices and why it was done is in these reports of the examiners.

Q. Do you know the method of the companies in writing policies of insurance, for instance, at an inadequate rate and then making cancellation thereafter when their attention is called to it—do you know that method?

A. Well, the method is——

Mr. Folonie (interrupting): We object——

Mr. Barker:

Q. Well, do you know the method?

Mr. Folonie (continuing objection): To asking his conclusion. It necessarily calls for a conclusion as to whether the rate is inadequate. If there are any such supposed cases we think the proper practice is to call for what the rate in fact is and what the rate was which was charged so [fol. 2884] that it may be specifically met and not indulge in generalities which can not ever possibly be reviewed because they are lacking in probative specific quality.

Mr Hogsett: And add the objection that there is no claim in the answer filed herein which would justify this proof. They are entering a charge filed which is not germane to any of the issues made by the pleadings.

Mr. Barker: Better read the pleadings. That is expressly stated.

Mr. Hogsett: I have.

The Referee: The question asks the witness whether or not he knows of a certain method. The question embodies the idea of adequacy or inadequacy of the premiums charged. That particular portion of the question obviously and necessarily calls for opinion only. The witness may answer the pending question.

The Witness: What is it, Dick?

(Question read by the reporter.)

The Referee: The question is whether or not you know the method.

The Witness: I do.

Mr. Barker: Explain to the court the usual method of these insurance companies in this suit in that instance.

Mr. Folonie: We object to any characterization by this witness of anything done by any of the companies as a general method of these companies and on the ground that it is hearsay, that it is immaterial and does not relate to any proper issue in this case, and incompetent.

[fol. 2885] The Referee: Do you know, Mr. Hyde, of a general method pursued by the companies, the plaintiffs here with respect to the particular matter inquired about? You may answer as to that matter.

A. I know the method.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted, and still except.)

Mr. Barker: Well, he said explain it.

A. Flat cancellations or pro rata?

Mr. Barker: Read him the question.

(Question read by the reporter.)

A. Well, a flat cancellation—on the method of flat cancellation the agent sends out the policy usually without paying. As I say, he tries to collect the premium and it runs different periods of time. If he is unable to collect the premium when it is canceled flat—they come in and cancel it flat or don't get anything for it. The objection to that method in my opinion is that it puts a big volume of insurance in force without any return, thus contracting the premium volume.

Q. What has your department been able to find with reference to a check as to the correctness of the losses reported by the companies in this lawsuit?

A. We have been unable to check the losses. We have only the reports there made by the company. The examination we find of the companies by their state of domicile does not include a verification of the reports made to the different states and there is no way of checking the losses.

{fol. 2886} Q. What has your examination developed with reference to the reasonable care and inspection of risks in Missouri?

A. We find that pretty generally bad risks are placed, over insurance easily obtained and the improper supervision of the selection of risks.

Mr. Hogsett: We move to strike out the answer as a bundle of conclusions and not a statement of any fact whatever but merely conclusions of the witness.

The Referee: Read the answer.

(Answer read by the reporter.)

Mr. Hogsett: There is not one single fact stated there that is not a conclusion.

The Referee: I think that objection is well taken. Sustained.

(To which action and ruling of the referee, the defendant, by counsel, then and there at the time duly excepted, and still excepts.)

Mr. Barker:

Q. What examination has your department made with reference to ascertaining the care the companies used in the selection and inspection of risks?

A. We find that there is no inspection made as to—on the property in a great many cases.

The Referee: Pardon me. The question calls for a statement as to the examination which you have made respecting that matter?

A. That is the examination we make.

The Referee: You were starting, apparently, to give the results of the question, which has not yet been called for.

[fol. 2887] Mr. Barker:

Q. What examination has your department made, if any?

A. Well, we have talked to a number of agents and a number of insurance men and had a hearing at Jefferson City and it developed that there was no inspection made as to the value of residence property and a great deal of the small business property, that the insurance was placed largely on a man's own valuation.

Q. What, if anything, has your department been able to discover with reference to an attempt to check the expense of the insurance companies as reported in this lawsuit?

A. We have been unable to check the expense. They are given in the whole and not in detail. The companies examined—makes no attempt to check the reports made to the state and there is no check that we can make on the expense.

Mr. Folonie: That part of the answer that the companies make no effort to check the reports in the state, whatever that means, we move be stricken out as not responsive and incompetent.

The Referee: Read the answer.

(Answer read by the reporter.)

The Referee: Read it again.

(Answer again read by the reporter.)

Mr. Folonie: I don't understand it, but whatever it is designed to say, we move to strike it out.

The Referee: Overruled.

Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted and still excepts.)

[fol. 2888] Mr. Barker:

Q. Take, for instance, Mr. Hyde, an expense ratio of 44 per cent, tell the court whether or not that means that it takes $440 out of every $1000 collected in premiums to pay the expense?

A. It does.

Mr. Folonie: First fact he has stated.

Mr. Barker:

Q. And whether or not that is not 88 per cent on their obligation to pay the losses which will average about $500 on a $1000 premium?

Mr. Folonie: We object to it as argumentative, leading and suggestive.

The Referee: Now, the exact question, Mr. Blume, please.

(Question read by the reporter.)

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted and still except.)

Mr. Barker:

Q. Did you answer it?

A. The answer is, "yes, sir."

Mr. Barker: State whether or not the companies on their obligation to pay therefor $500 in losses have an expense of $440 on that method?

A. They do.

Mr. Folonie: Same objection.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Barker:

Q. Now, take as a method of comparison, Mr. Hyde, a bank which loans $500, and explain what the bank would ordinarily handle that for.

[fol. 2889] Mr. Folonie: Objected to as immaterial what banks do as incompetent.

The Referee: Overruled.

Mr. Barker: Now——

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Folonie: And qualification of the witness not shown.

The Referee: Sustained.

(To which action and ruling of the referee, the defendant, by counsel, then and there at the time duly excepted, and still excepts.)

A. The bank would loan——

The Referee (interrupting): The objection as to the qualification of the witness is sustained.

Mr. Barker:

Q. Are you familiar with the method of making loans by banks?

A. Yes, sir.

Q. Have you frequently borrowed from them?

A. Occasionally.

Q. Are you interested in banks?

A. Yes, sir.

Q. You may answer, I guess.

The Referee:

Q. And have been for some years, Mr. Hyde?

A. Yes, sir.

The Referee: Proceed.

A. The bank will loan $500 for from six to eight per cent, which is from $30 to $40 a year to cover both profit and expenses.

Mr. Barker:

Q. Mr. Hyde, are you familiar with the system known as multiple agency systems in the State of Missouri?

A. Yes, sir.

[fol. 2890] Q. Explain to the court what is meant in the insurance world by multiple agency systems?

A. By that, Mr. Barker, it means a multiplication of their agencies. In Missouri the agencies have been from time to time increased until there is apparently a good many more agents than can best serve the people—just pyramiding the expense.

Q. Mr. Hyde, as Superintendent of Insurance, have you made or had them made under your express direction as to the reported investment earnings of these companies in this lawsuit?

A. Yes, sir.

Q. Have you a separate table of that?

A. Yes, sir.

Q. I will ask you if the investment income from 1917 to 1921, inclusive, as reported, is $268,849,122?

A. Yes, sir.

Mr. Polonie: We object to it on the ground it is not shown that the witness participated in any way in the making of the calculations and he is not qualified.

The Referee:

Q. Mr. Hyde, were these examinations made under your instructions?

A. Yes, sir.

The Referee: As Superintendent of Insurance this state?

A. Yes, sir.

The Referee: By whom were they made?

A. Mr. McGee and he had an assistant or two, I don't know just who.

The Referee: Officials of your department?

A. Yes, sir.

[fol. 2891] The Referee: Q. The report made to you?

A. Yes, sir.

The Referee: Q. And you have that report?

A. I have a summary of it.

Mr. Leahy: May be an inaccurate summary, Your Honor.

Mr. Barker: This is a copy of your own report.

Mr. Leahy: The report speaks for itself.

Mr. Barker: There it is, and I am putting it in in my own way.

Mr. Leahy: And you are asking leading questions.

The Referee: The report is certainly the best evidence of its contents.

Mr. Barker: Well, it is showing tabulations made from the report, Your Honor.

Mr. Leahy: No showing as to his ability to make these tabulations.

Mr. Folonie: We have introduced no reports in this case on investment figures. We haven't put in a figure on investments from beginning to end in this lawsuit.

Mr. Barker: Well, we will get it all right.

Q. Do the companies report their investment earnings to your department?

A. Yes, sir.

Q. Are you in charge of those reports?

A. Yes, sir.

Q. You are in charge of those reports?

A. I am in charge of their reports.

Q. Have you had occasion to have them tabulated in your department and under your direction?

A. Yes, sir.

[fol. 2892] Q. Have you aided in those tabulations?

A. No, sir.

Q. You have the result of the tabulations as reported to you?

A. Yes, sir.

Q. Now, do those tabulations show an investment loss of $16,477,906?

A. Yes, sir.

Mr. Folonie: We object, if the court please, to summarizing a tabulation not produced and incompetent.

The Referee: Certainly the summary itself is the best evidence of its contents. I am somewhat in doubt about the propriety of introducing the summary unless the reports themselves are available for examination.

Mr. Barker:

Q. Are the reports in your office, Mr. Hyde?

A. Yes, sir.

Q. Each of the companies in the lawsuit make a report?

A. They did.

Q. Make one report each year?

A. Yes, sir.

Q. That would be five times the number of companies involved in this suit?

A. Yes, sir.

Q. They are open of access to the companies?

A. Yes, sir.

Q. And given to your department by the companies themselves?

A. Yes, sir.

The Referee: I am referring not to the reports from these companies but to the reports made by the officials of the Insurance Departments to the Superintendent for the purpose of this examination. Now, those tabulations and summaries by the officials of the department, I think, are properly competent in evidence, but I don't think that it is competent for this witness to state verbally what the contents of those written documents are.

[fol. 2893] Mr. Barker: I didn't think he was doing that.

Q. Are you testifying from the tabulations as presented to you having been made in your department and under your control and which you have in front of you?

A. Yes, sir.

Q. Were they correctly reported to you?

Mr. Hogsett: Objected to as calling for a conclusion. He could not possibly know.

The Referee: That is immaterial.

Mr. Barker: I think so.

The Referee: It will be presumed that they are correct.

Mr. Barker: I think so.

Mr. Folonie: His answer as to what he has before him I think may be misleading and if not further pursued, and may I ask him a question about it?

The Referee: Yes.

Mr. Folonie: Q. Mr. Hyde, did the calculations made by Mr. McGee and other assistants of yours come to you in tabulated form and as a tabulated report?

A. They tabulated this report. This is a summary of what he put in the other day.

Mr. Folonie: Q. Well, this summary that you have here is not the report itself that was made to you, but a summary made from it, is that correct?

A. Well, this is part of the report. This deals with totals and the other dealt with the years along as they happened.

The Referee: Who made the document you have in your hand?

[fol. 2894] A. Mr. McGee compiled it; the figures.

The Referee: I think you may show, General, what that document contains.

Mr. Barker: Well, I will withdraw that. That is just a summary of the evidence of Mr. McGee and if there is any objection to that, the investment earnings—it has been put in before so I will save time by withdrawing that.

Q. Mr. Hyde, what is regulated and non-regulated insurance business in Missouri?

A. We designate the regulated as the fire, lightning, hail, windstorm business which comes under the rating law, and the non-regulated as all other classes done by the fire insurance companies.

Q. Mr. Hyde, are you familiar with the premiums paid agents throughout the State of Missouri?

A. Yes, sir, fairly so. Yes, sir—I will change that.

Q. What are the different organizations and what are they called in the state?

A. There are two main——

Mr. Folonie: (interrupting): We cannot object, if the court please, because we haven't any conception of what is being interrogated. We reserve the right to move to strike out the answer if there is anything in it.

Mr. Barker: You don't want to fail to object because you have done nothing but object all through the hearing.

The Referee: There is no objection pending. Proceed.

The Witness: Two groups of companies—really two groups of companies with a specific scale, one known

[fol. 2895] as—commonly known as the Union and the other as the Bureau.

Mr. Barker:

Q. Do those two associations pay a premium to agents throughout Missouri?

A. Slightly different scale, yes, sir.

Q. What is the scale?

A. Well, the Union companies have a scale of ten per cent on certain classes, 15—10, 15 and 25; I don't know the classes. 10, 15 and 25.

Q. What association is that?

A. I think I got that wrong. It is 15, 20 and 25.

Q. Now, what association is that?

A. That is the Union. Western Union, I think; known as the Union.

Q. Now, take the Bureau companies, what commission do they pay?

A. Well, they pay the same commissions except five per cent more on brick and frame buildings and the contents of brick buildings.

Q. Take in the City of St. Louis, what commissions are paid there?

A. Well, there has been all kinds of commissions paid in St. Louis.

Q. Do you know what they are?

A. For a while they paid—the St. Louis schedule was five per cent in excess of the Union schedule on everything and they paid an overwriting or a supervision over that of five per cent; and in addition to that they paid five and ten per cent contingent based upon the profit of the agency to the company. There was an instance of some companies paying a flat 30 or 35. Some of the companies today are pay-[fol. 2896] ing ten per cent more than the Union scale with an overwriting general agency commission of five.

Q. Is the commission in St. Louis higher than that paid in other parts of the state?

A. Commissions in the other parts of the state are regular scale—it is higher, yes, sir.

Q. St. Louis premiums higher than those paid in Kansas City?

A. Yes, sir.

Q. How much higher?

A. Well, those agents get a ten per cent straight through and a five per cent overwriting commission there 15 per cent higher; with a probable contingency those agents don't get but five per cent—those agents get a five per cent higher and an overwriting five per cent higher and an overwriting five per cent commission, would be ten per cent higher. A 35 per cent flat or a 30 per cent flat commission would be 15 per cent higher.

Q. Do the companies report to your department as to why they pay a higher commission in St. Louis than other parts of the state, and what report do they make as to that?

A. They just report what the commissions were. At one time I called for such a report; and they didn't say why.

Q. Do they have a special agency system in St. Louis with reference to paying special agents and brokers?

A. Some of the companies have what is known as a special agent.

Q. What does that mean?

A. Well, that is a salaried man and the complaint was made that these special agents paid a brokerage equal to the commissions paid the agents; thus increasing acquisition cost, whatever their salary, office expense and those things were.

[fol. 2897] Q. Mr. Hyde, are you familiar with the method of the insurance companies in reinsuring their business?

A. I am familiar with the method of reinsurance, yes.

Q. Explain to the court just what reinsurance is and what property it affects, usually?

Mr. Folonie: Object on the ground the witness is not qualified.

A. Reinsurance is where one company cedes a part of its business or its obligations against——

The Referee: He says he knows. Proceed, Mr. Hyde.

The Witness (continuing): —certain parts of business to another company. For instance, if one company would take their policy for $100,000 and want to retain ten of it, they pass that obligation of the ninety to another company. That is called reinsurance. Of course, reinsurance could apply and does apply to the reinsurance of the company's

business as a whole. It would be the transfer of the obligations incidental to the policy to someone else.

Mr. Barker:

Q. In your investigation in Missouri, do the companies cede, or assume, which, the most business—that is, do they cede more or assume more?

A. They cede more.

Q. Now, take the company that writes the initial risk and then cedes a part of that to another company what arrangements do the two companies make between themselves as to the handling of the risk?

A. The company ceding the business turns over the entire premium to the company assuming the business. The com- [fol. 2898] pany assuming the business pays a commission for this business of from 25 to 30 per cent. Thus the company—the direct writing company or the company who originally had the business gets 25 per cent—from 25 to 30 per cent commission for the reinsurance. Now, the company who had the business originally does everything incidental to taking care of this policy the same as if it was still carrying it. The assuming company paying on proof of loss only. And my contention is that the direct writing company by thus accepting an average commission of 25 or 30 per cent loses on the deal because its own expense ratio is 40 to 42 per cent.

Q. Does a company that is——

Mr. Folonie: I don't think the witness has completed his answer.

Mr. Barker:

Q. Have you?

A. Yes.

Mr. Folonie: It seems to have just run into a suspended state and stopped.

The Referee: The witness thinks he has finished his answer, and he is the final judge. Proceed.

Mr. Barker:

Q. Does a company with an expense ratio of 40 per cent which cedes some of its insurance to another company and

receives from that company only 25 per cent for thus ceding its business to it, it would be conducting that business 15 per cent less than its regular expense ratio?

A. Yes, sir.

Q. Are the commissions for assuming the business, and paid by the assuming company, ever as much as the total expense experience of the companies?

A. No, sir.

[fol. 2899] Q. Now, reinsurance usually affects small properties or large properties?

A. Reinsurance is only necessary on those risks of such magnitude that the company does not want to keep the entire amount. Thus reinsurance cost does not help the little insurer or the big percentage of the policyholders. It is of no advantage to them.

Mr. Hogsett: Now, if the court please, we move to strike out the answer of the witness for the reason that it is not germane to any issue here. We have an absolute right, the companies have, to reinsurance granted by an express statute of this state, which was called to the court's attention. Now, it so happens that the defendant Superintendent of Insurance does not agree with that policy. But he is out of accord with the custom of the business all over the world and he is out of accord with the law as declared by the legislature of this state. Now, how, therefore, does it become material what he thinks about reinsurance and whether he thinks that is a good thing or not? We have the right to do it. It does not affect the question whether or not this ten per cent reduction order is authorized or not. It does not in the slightest degree throw any light or have any effect upon the question whether in 1917 to 1921 we made a profit or a loss. It has no effect—doesn't affect it in the slightest degree. He might as well criticize the five-year period as a basis. He might as well say he doesn't think that is proper. It doesn't make any difference what [fol. 2900] he thinks about it; or the law as affects it. Likewise the law has given us the right to reinsure.

The Referee: What is the relevancy of the witness' opinion of reinsurance?

Mr. Barker: Because it is not all on the theory that Mr. Hogsett has suggested. We recognize the statute allows reinsurance. We are attempting to show that the method

the companies use in reinsuring results in a loss of about four and a half per cent to the policyholders of the state and which burden must be borne by the companies as corporate losses rather than as an operating expense. It looks to me like it comes with poor grace for these gentlemen to say it is not a question of whether five years' experience is available. I made my objection to that yesterday, and Your Honor allowed that to go in over my objection. And now Your Honor, too, in this matter, this is vital to us for this reason: We are not questioning reinsurance as Mr. Hogsett states. Reinsurance is a recognized method throughout the world, reinsurance by the Missouri statute, but the system of a company paying 40 per cent and then ceding it to another company and getting 25 per cent back, thus creating a loss of 15 per cent, resolves, as—results, as the evidence in this case all shows, in a loss of four and a half per cent to the insurance companies which must be deducted and this is a tabulation of their expense in Missouri, it being a corporate loss which they have a right to take if they want to, but in having it they have no right to pass it on to the State of Missouri.

[fol. 2901] Mr. Hogsett: And by the same logic——

The Referee: Just a moment. That evidence is offered, then, in the nature of an attack on the expense account of the company?

Mr. Barker: Yes, sir.

Mr. Hogsett: It would follow, then, by the same sort of logic, that if any other system or custom of the company did not meet with the approval of the defendant, he could say, well, yes, you have a right to do that, but the expense of doing it, although it might be a custom and practice adopted universally, yet I don't agree with that and so, perforce of that fact, the expense incident to the practice must be segregated and cut out of your general expense and borne by the company and we will just call it a corporate loss and therefore we can't figure it at all in determining whether you made a profit or loss. What difference does it make what he thinks about it? That is wholly immaterial.

The Referee: So far as the universality of the custom is concerned, that is a matter that goes to the weight rather than the competency of the evidence, in my judgment.

Mr. Barker: We had the same question on charity gifts, and so forth.

Mr. Folonie: May we suggest, before Your Honor comes to a determination that a shotgun inquiry as to practice of companies without anything specific in it or without attempting to show in any details what commissions are paid by this company or that company or what commissions are allowed, when obviously it is an attempt to gereralize as to a practice without anything specific in it at all, can [fol. 2902] not possibly throw any light on the expense item.

Now, suppose, if the court please, conceding, for the sake of this objection—I mean as argumentatively, now, that it would prove that a company that ceded some of its business did so and took—consciously took a loss and failed to reimburse itself for all of its expense in acquiring the business, if that company did so because in its judgment that business was undesirable and that that business as it existed on its books would produce an excessive cost for the care of it during the remainder of the term and thereby sought to reduce its loss by taking a loss less than it would be by carrying it, how can you, by a shotgun inquiry of this kind, find that is true or is not true by generalizations? You can't characterize the whole transactions of 160 companies in such an inquiry as that and throw any light as to whether their expense are proper or improper.

The Referee: The witness seems to think he can. Overruled.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted, and still except.)

(Question and answer read by the reporter.)

Mr. Barker:

Q. Have you had occasion, Mr. Hyde, in this investigation——

The Witness (interrupting): Wait a minute. Where it says, "Reinsurance is only on those risks"—read that part of the answer again.

(Answer again read by the reporter.)

[fol. 2903] The Witness: Insert the word "necessary" so that the answer will start as follows: "Reinsurance is only necessary on those risks," and so forth.

(Whereupon the reporter inserted the word "necessary" the fourth word in the preceding answer, as directed, and thereupon read the answer as amended.)

Mr. Leahy: The conclusion in the second part of that answer should be stricken out.

Mr. Hogsett: That has been passed on. His declaration of the necessity, speaking as a man familiar with these things, when reinsurance is necessary, I think is all right.

Mr. Folonie: I think a motion of such merit might well be made twice, Your Honor; so we make it a second time.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted, and still except.)

Mr. Barker:

Q. Have you had occasion, Mr. Hyde, in this investigation to figure the losses to the companies on the plan of reinsuring which you have just suggested?

A. Yes, sir.

Q. What does that show? What per cent does it show?

A. Between four and five.

Q. Four to five per cent on what?

A. Premiums; net premiums.

Q. Now, then, the total net premiums as reported in this lawsuit are $83,502,181. If the reinsurance as you have suggested results in a loss to the companies of four and a [fol. 2904] half per cent, what would that total be in Missouri?

Mr. Folonie: We object to it as an inconsequential calculation.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted, and still except.)

A. $3,753,598.

Mr. Folonie: That is on a theory that they reinsured all their business?

A. That is on a theory that it cost them four and a half per cent on all their business; not reinsuring all of it, no.

Mr. Barker:

Q. Those totals are on all classes of business, regulated and non-regulated?

A. Yes, sir.

Q. Now, take the regulated business in Missouri which is reported to the department and the cost is $71,969,802 and if you figure a loss of four and a half per cent, what would that amount to in Missouri?

Mr. Folonie: We object to it as an inconsequential calculation.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted, and still except.)

A. $3,258,641.

Mr. Barker:

Q. Now, will you explain to the court how you figure and how you produce those results and just what you mean by that?

Mr. Folonie: Same objection.

[fol. 2905] The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted, and still except.)

A. We start out on the theory that the Missouri statute contemplated for rate-making no middle men as between the insured and the insurance company, and that a company ceding business certainly lost all of the expense and profit that the assuming company received. In going over the reinsurance of the different companies as best we could we figured that 25 per cent of the total business was ceded to non-admitted companies; that the commission and expense of the assuming company was 80 per cent, which left 25

per cent ceded to non-admitted companies and would be $20,875,545. Losses and expense of assuming company, $16,680,436; a difference of $4,195,119. Which is more than four and a half per cent.

The Referee: More than four and a half per cent of what, Mr. Hyde?

A. Net premium.

Mr. Folonie: Move that be stricken out as an inconsequential calculation and immaterial.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted, and still except.)

Mr. Barker:

Q. Mr. Hyde, in the insurance world, at what are the agency plants valued at, if you know?

Mr. Folonie: Object, on the ground the witness is not qualified.

[fol. 2806] The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted, and still except.)

Mr. Hogsett: In aid of that, I would like to ask him a question.

Q. Mr. Hyde, have you ever established or had anything to do with the establishment of an agency plant for an insurance company?

A. No, sir.

Mr. Hogsett: Q. Were you ever in the insurance business?

A. No, sir.

Mr. Hogsett: Q. Never been in your life?

A. No, sir.

Mr. Hogsett: Q. Did you ever see a contract with an agency?

A. Yes, I saw what purported to be.

Mr. Hogsett: Q. How many times have you done that?

A. Well, we have had what purported to be contracts, copies of them in our office at Jefferson City.

Q. Do you know anything about, of your own knowledge or from any experience that you have had since you have been commissioner of insurance as to what it would cost to plant agencies in the State of Missouri for an average sized company?

A. I never planted any, but I have very frequently heard said what it would cost.

Q. Then all you know is just based on what somebody has said in your presence?

A. And on inquiries made, that is aall.

Mr. Hogsett: Of whom?

A. Companies.

[fol. 2907] Q. How many people have you asked that question?

A. I couldn't enumerate them; probably eight or ten.

Q. And who are they?

A. I don't know as I can recall their names. I have talked with Cardwell of the Liberty Fire and the manager of the Marquette and his group of companies.

Q. Well, then, all that you know——

A. (Interrupting.) And several others, but I don't think of their names.

Q. All that you would be able to say in answer to the question of General Barker would be what these men have told you—it boils down to that, doesn't it?

A. Well, what the different ones have told me. I think it is correct, however.

Mr. Hogsett: We object to the question for the reason the witness has no independent knowledge of it himself whatever, is not qualified and any answer he would give would be the result of hearsay.

The Referee: Sustained.

(To which action and ruling of the referee, the defendant, by counsel, then and there at the time duly excepted and still excepts.)

Mr. Barker:

Q. Now, your department made an investigation as to the cost—the recognized cost of agency plants in the state?

A. Yes, sir.

Q. You heard the testimony in this suit that it is figured at 25 per cent?

A. Yes, sir.

Q. Do you agree with that?

A. I think that is——

Mr. Hogsett (interrupting): Just a minute. We object on the same ground, that he doesn't know anything about it [fol. 2908] himself and all that he would know would be the result of hearsay.

Mr. Barker: Well, that is the only way an insurance commissioner gets his information.

Mr. Hogsett: No, not at all.

Mr. Barker: Yes, it is.

Mr. Hogsett: Then if he is an insurance commissioner without experience, that does not ipso facto qualify him to testify as to facts concerning which he knows nothing.

Mr. Barker: But he can testify to anything that is reported to him—a doctor who has never performed an operation for appendicitis may testify all about appendicitis from his reading and investigation and learning, of course.

Mr. Hogsett: But this gentleman has just talked with eight people and asked them what it costs to plant a company and they told him, and now he is going to say what they said.

Mr. Barker: We are agreeing with your testimony in this case——

Mr. Folonie (interrupting): He is not qualified to agree or disagree.

The Referee: Objection sustained.

(To which action and ruling of the referee, the defendant, by counsel, then and there duly excepted at the time, and still excepts.)

Mr. Barker:

Q. Mr. Hyde, do you know from your investigation at to the cost of establishing—the recognized cost of established agencies in the state?

Mr. Folonie: Same objection.

[fol. 2909] Mr. Barker: I am asking him if he knows.

The Referee: He may answer.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted, and still except.)

A. Yes, sir.

Mr. Barker:

Q. What is the recognized value of established agency plants in this state, if you know?

Mr. Hogsett: Objected to, for the reason the witness is not qualified and it is affirmatively shrown he is not qualified to answer the question, and that any answer he would give would be hearsay.

The Referee: Sustained.

(To which action and ruling of the referee, the defendant, by counsel, then and there at the time duly excepted, and still excepts.)

Mr. Barker:

Q. Are you familiar with the different methods of figuring underwriting profit as used throughout the United States?

A. Yes, sir.

Q. Are you familiar with what is know- as the earned premium theory adopted by the plaintiffs in this suit?

A. Yes, sir.

Q. Are you familiar with what is known as the written premium theory?

A. Yes, sir.

Q. Are you familiar with what is called the E. G. Richards formula?

A. Yes, sir.

Q. Are you familiar with what has been referred to as the foreign method?

A. Yes, sir.

Q. Now, Mr. Hyde, in considering the earned premium theory, tell the court how that is arrived at.

[fol. 2910] A. I have a chart here I would like to show on that if the court will allow me to.

Q. All right, you may. First give the court the theory and tell what the earned premium theory means and how they reach the result?

A. In the earned theory they take the unearned premiums at the close of the given period and add them to the written premiums for the period and then deduct the unearned premiums at the end of the period.

Q. Is that a proper method of figuring the underwriting profit?

A. No, sir.

Mr. Hogsett: Just a minute. Pardon me. I move to strike out the answer last given for the reason he is not qualified to express an opinion on the subject.

The Referee: Overruled.

(To which ruling and action of the referee, the plaintiffs, by counsel, then and there at the time duly excepted, and still except.)

Mr. Barker:

Q. Have you prepared a chart showing the workings of the earned premium theory as developed by the figures offered by the companies in this suit and accepting premiums, their losses and their expenses as reported?

A. Yes, sir.

Q. Have you it with you?

A. Yes, sir.

Q. Put it up over there on the wall and make such explanation as you care to.

A. This is an exact reproduction of the company's figures. The net premium written during the five-year period in question is $83,502,181. The unearned premiums on January 1, 1917, are $8,372,804. You deduct from that the [fol. 2911] addition of those two sums, the earned premiums—unearned, January 1st, 1922, leaving total earned premium $74,813,776; total losses paid and incurred as the company's figures, $48,593,664. Expense incurred, $33,604,414. Underwriting loss, $7,384,302.

Now, turning the figures around as they were yesterday, and starting with the same premiums written during the period and taking the $17,000,000 as the unearned premiums at the beginning of the period, and $8,000,000 as the unearned premium at the end of the period, you get earned premium of $92,990,586. Using the same incurred losses and expenses you get a net underwriting profit of $9,992,508 instead of a loss of $8,384,302.

Q. Now, in reaching that result——

A. (Interrupting.) Wait a minute.

Q. All right go ahead.

A. Now, the trouble and the falsity of this method is that we get from a period up here $8,372,804 in unearned premium, on which all expenses has been paid. Now, the expenses on those premiums that were represented by this amount—expenses on the premiums that are represented by the unearned premium reserve of $8,372,804, are nearly the same as the unearned premium reserve itself, because the expense ratio was 40 per cent of the premiums and the unearned premium reserve is 50 per cent of the premium.

Now, as I said, the trouble is that on this unearned premium reserve all the expenses incidental to it have been paid in a period before the period in question. Consequently, you get an addition to your written premiums of [fol. 2912] eight million dollars, on which the expenses have been paid. But you get a deduction from it of $17,061,209, on which the expenses have been paid. Now, the real difference in the thing—one of the differences in these methods is that on an increased business we get given to us in those unearned premiums a lot of expense that has been heretofore paid and should be paid in this period. But on the deduction in the bigger amount, they deduct all the income and leave all the expense incidental to it in there; which will make at least 45 per cent difference, in the business. In other words—now, on a decreasing business we get up here and get securtiy for seventeen million dollars' worth of premiums on which all expenses have been paid—which is a magnificent gift—but down here we get deducted a lesser amount on which we paid the expense; so that on an increasing business it will show a poor underwriting profit, and on a decreasing business it will show a big underwriting profit. It is not the measure of accuracy at all in this case.

I don't know whether everybody sees that or not, but the trouble is here that on the unearned premium reserve of eight million dollars the expenses have not been paid on it; say they are fifty per cent. Four million of expense paid back here that ought to be paid here (indicating).

When we deduct at the end of the period or deduct all of the seventeen million income which has practically eight million dollars expenses paid on it. And you should deduct the expense incidental to the income to get at the truth. It

[fol. 2913] is impossible to estimate the incurred losses from the figures they gave; that is, what it was at the first or end of the year, because they did not figure the increase, so we will say, for instance, that a company on the beginning of the period is $100,000 in incurred losses. That is, I mean by incurred losses, losses which had happened but had not been paid.

Incurred losses, as estimated by a company, if they are conservative, are bound to be in excess of what they actually afterwards cost to pay them. There is no such thing as estimating them accurately and a company that is trying to be safe will over-estimate its losses. Now, on the theory of incurred losses, deduct the losses from—they take the losses from the other period that were incurred and give—and deduct them from the paid losses during the period because if they don't they would be in there twice. Then they take the incurred losses at the end of the period and add them to the figure that they get that way. That does this: If we have $100,000 losses at the beginning of the period and they could be paid for 90 cents on the dollar, then we have a credit in our loss item of $10,000 too much. But if the business is on an ascending scale and this incurred loss item is $200,000 at the end of the period and it is paid for 90 cents on the dollar, then they have added to your incurred loss $20,000 too much, so for rate-making purposes, on that theory, we are out $10,000. Now, that is not a theory because the average company, if it is safely run, will more than estimate their losses for a little more than they are. In fact, if they didn't do it but continuously [fol. 2914] under-estimated their losses when they would be examined they would be severely criticised and that method would have to be changed.

The Referee:

Q. Good business in the insurance world requires that there should be rather an over instead of an under estimate of incurred and unadjusted losses?

A. Yes, sir. All companies that were examined—we would severely criticize them if that loss reserve was inadequate. In fact, they tried to keep it a little more than adequate, and that is only common sense and good judgment.

By this method, if that is true, on an ascending scale of business we get credit—I don't say it is ten per cent—it might be twenty per cent too high, but as an illustration, if it is ten per cent too high and they paid the incurred losses in the first instance for $90,000, we have got a credit with $10,000 too much.

On an ascending scale, if they paid $200,000, 90 cents on the dollar, we would be charged $20,000 too much. The whole business is really that the United States insurance business is going to increase in volume. There is not a thing about it in this method that don't give on an increased value, that don't give the companies for rate-making purposes an entirely fictitious and unfair advantage.

On incurred expenses now, and I want to be understood on this because I think for rate-making and financial statements, that the situation is different, but on your incurred expenses, if the companies, which they have done in this case, put in 150 per cent expense ratio—I can give some of them, and here is one—the Standard Fire had 182.24 one [fol. 2915] year—but if they can give an extremely large expense ratio, which numerous companies have done, certainly for rating purposes an inventory of the things of value ought to be considered. The value of their agency plant for rating purposes. Certainly 182 per cent expense ratio can not be justified other than as building up an agency plant; so that I say that this incurred expense is wrong unless the things of value and increases in them are inventoried and the rating body given credit for the increased value of the things of value. This shows the difference.

They had an argument here yesterday in reference to being impossible to have these differences in reserve. It is not impossible at all if you take it in the period. This thing—what was before there we have taken. That could easily come down to this if in the first two or three years they had a big volume of premium and in the last year or two a marked decrease. It would be an exact condition as set forth there.

Q. Now, Mr. Hyde, just a moment. On the chart which you have prepared and using the same figures you say, "Company method on an increasing business." Now, using the same figures as reported in this lawsuit on that theory,

it shows an underwriting loss of $7,384,302. Now, using the same figures below, headed, "Company method on a decreasing business," with the same figures for the same length of time, you show an underwriting profit of $9,992,508?

A. Yes, sir.

Q. Now, are those results reached on using the same figures in both instances?

[fol. 2916] A. Yes, sir, and the same company's figures and the same written premiums during the period except just to change them at the beginning—at the terminals; beginning and the ends.

Q. Now, explain, for the benefit of the court, what is known in that chart as the foreign method of figuring insurance profits. Mr. Hyde, the chart as used by you in explaining the company's method on an increasing business and the company's method on a decreasing business is Marked Exhibit 2031, is that right?

A. Yes, sir.

Mr. Barker: We offer the same in evidence.

Mr. Folonie: We object on the ground immaterial and inconsequential calculation.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted, and still except.)

[fol. 2917] Company Method on an Increasing Business

Net Premiums Written....	$3,502,181	.....	.....	.....
Unearned Prem. Jan. 1, 1917 Add.....	8,372,804	91,874,985	.....	.....
Unearned Prem. Jan. 1922 Ded.	.....	17,061,209	.....	.....
Total Earned Premiums....	.....	74,813,776	.....	.....
Total Losses Paid & Incurred	.....	.....	48,393,664	.....
Total Expenses Paid & Incurred	.....	.....	33,604,414	82,198,078
Underwriting Loss.....	.....	7,384,302	.....	.....
Increases in Unearned Prem.	8,686,805	82,198,078	.....	82,198,078

Company Method on a Decreasing Business

Net Premiums Written....	83,502,181	.....	.....	.....
Unearned Prem. Jan. 1, 1917 Add.....	17,061,209	100,563,390	.....	.....
Unearned Prem. Jan. 1, 1922 Ded.....	.....	8,372,804	.....	.....
Total Earned Premiums...	.....	92,190,586	.....	.....
Total Losses Paid & Incurred	.....	.....	48,593,664	.....
Total Expenses Paid & Incurred	.....	.....	33,604,414	82,198,078
Underwriting Profit.....	.....	.....	.....	9,992,508
Decrease Unearned Prem..	8,088,405	92,190,586	.....	92,190,586

[fol. 2918] Mr. Barker: Now, explain to the court what is known as the foreign method, and how it is arrived at.

Mr. Folonie: Object on the ground the witness is not qualified.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted, and still except.)

The Witness: I have used in this case the same premium, losses and expenses as reported by the companies in this suit. The foreign method takes fifty per cent of the unearned premiums and adds it to the revenue of the premi-[fol. 2919] ums during the period and deducts fifty per cent of the unearned premiums at the end of the period. They do that on the theory that the total liabilities of the company on account of this unearned premium reserve is not—is fifty per cent of it. And the most that they could be liable for in any instance being fifty per cent of it, they take fifty per cent in each case and add it instead of the whole. That is their theory.

Mr. Barker:

Q. Now, show your result on that chart. Start out with the figures at the top.

A. Under "Premiums written," $83,502,181; fifty per cent unearned premium January 1, 1917, $4,186,403; total, $87,688,583. Deduct unearned premiums January 1st, 1922, $8,530,605. Total earned premium, $79,157,978; total losses paid and incurred $48,593,664. Expenses paid and incurred, $33,604,414. Giving a total of expenses and losses, $82,198,078. Underwriting losses, $3,040,100. This is on the chart——

Mr. Hogsett (interrupting): Foreign company method contemplates the use of earned premiums, incurred losses and incurred expenses, does it not?

A. Yes, sir.

Mr. Barker: Go ahead, unless you are through with it.

A. Well, I had this thing on my sheet here. Now, by reversing the premium unearned at the beginning and at the end of the period——

Q. (Interrupting.) On the foreign method?

A. On the foreign method; you would show an underwriting profit of $5,648,306.

[fol. 2920] Q. By using the same figures and reversing them as you did before?

A. Written premiums, losses paid and expenses paid and reversing the unearned premium reserve.

Q. Would show a profit of what?

A. $5,648,306.

Q. As against a loss of $3,040,100 on the chart which you have before you?

A. Yes, sir.

The Referee: This evidence, if I understand your testimony, Mr. Hyde, is intended to show both that the method adopted by the companies in this instance and the method here designated as the foreign method are inaccurate in their results?

A. Yes, sir.

The Referee: Proceed.

Mr. Barker:

Q. Now, Mr. Hyde, if you have finished with the foreign method you have before you on the chart, what is known as the method on the Missouri statutes?

Mr. Hogsett: If Your Honor please, it has been asserted here repeatedly by counsel for the other side that the Missouri statute method was on the basis of written premiums, paid losses and expenses. We challenge that. We say that is not so, and we object to the use of a chart which is predicated on that erroneous theory.

Mr. Barker: Well, that is our theory. It may be wrong.

Mr. Hogsett: I understand, but you call it the Missouri statute method and there is no such provision in the Mis-

souri statute. You have repeatedly said to this court that the Missouri statute expressly stated and required that un- [fol. 2921] derwriting profit and loss was to be calculated on the basis of written premiums, paid losses and expenses, and we deny that and we challenge you now to point it out if you say it is in the statute.

Mr. Barker: We want to offer our theory and then the court can determine which method he will follow.

The Referee: The burden of properly construing the statute is, I suppose, upon the court. Proceed.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted, and still except.)

The Witness: Here again we have used the figures of the companies presented in this case. On the net premiums written it is $83,502,181; losses paid, $47,057,423; expenses paid, $33,103,634 or $80,161,057.

Mr. Barker:

Q. Total losses and expenses?

A. Yes. Underwriting profit, $3,341,124.

Q. Now, then, Mr. Hyde, that is on all classes of business as reported by the companes in this lawsuit, regulated and non-regulated?

A. Yes, sir.

Q. Now, you have below you another chart, "Method Missouri Statute—Rate Regulated Classes," give the experience of that.

A. On the "Rate Regulated Classes"——

Q. (Interrupting.) Give me the experience of that calculation.

A. Net premiums written, $71,969,802; losses paid, $39,108,388; expenses paid, $28,532,023; total losses and expenses paid, $67,640,411; underwriting profit, $4,329,391. [fol. 2922] Now, on the—we contend that this method—the Missouri method is correct for the reason it uses accurate and known figures; figures that are. That the other method uses averages and percentages and estimates and can not be as correct as this method; that either method where the volume of business is on an even flow will give the same answer.

That is the company method as staated before a small volume of unearned premiums at the beginning on which the expenses have been paid and a large volume of unearned premiums at the end on which the expenses have been paid, shows an erroneous condition because it charges expenses during the period on a lot of premiums that they subtract from the income and for the further reason that the estimate on incurred losses on this basis is with a conservative company is bound to be unfair to the rate-making body, and for the further reason that the expenses on their method if you are going to have incurred expenses you should inventory the things of value and give the rating body the advantage of whatever the increase might be.

Q. If you are through with that chart now I will have it marked.

The Referee: Mark the chart and take a recess of five minutes.

Mr. Barker: I will mark the chart and offer it and then take the recess.

(Chart so indicated marked by the reporter Exhibit Number 2032.)

[fol. 2923] Mr. Barker: We offer Exhibit Number 2032.

Mr. Folonie: We make the same objection.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted, and still except.)

[fol. 2924] Foreign Company Method

Net Premiums Written	$3,202,181			
50% Unearned Premium				
Reserve Jan. 1, 1917 $3,372,804 Add	4,186,402	$7,088,583		
50% Unearned Premium				
Reserve Jan. 1, 1922 $7,081,209 Ded		8,530,695		
Total Earned Premiums		79,157,978		
Total Losses Paid & Incurred			48,205,064	
Total Expenses Paid & Incurred			33,994,414	82,198,078
Underwriting Loss		3,040,100		
		82,198,078		82,198,078

Method Missouri Statute

Net Premiums Written	83,502,181	.....	.....
Losses Paid	.....	47,057,423	.....
Expenses Paid	.....	33,103,634	80,161,057
Underwriting Profit	.....	.....	3,341,124
	83,502,181	.....	83,502,181

Method Missouri Statute—Rate Regulated Classes

Net Premiums Written	71,909,802	.....	.....
Losses Paid	.....	39,108,388	.....
Expenses Paid	.....	28,532,023	67,640,411
Underwriting Profit	.....	.....	4,329,391
	71,909,802	.....	71,909,802

[fol. 2925] Mr. Barker:

Q. Now, Mr. Hyde, I call your attention to Exhibit Number 2033, the chart which you have prepared, and I wish you would explain to the court in going down the items what calculations you have made on that chart.

A. This is a chart on earnings of 1917 to 1921, inclusive, for stock fire insurance companies in Missouri. We have used here the figures as produced by the companies in this case. The first figure is net premiums written, $83,502,181. The next, investment earnings——

Mr. Folonie (interrupting): We object on the ground, first, that no such figures have been produced by the companies in this case respecting investment earnings, and we object to any proof respecting investment earnings of the plaintiffs, or any or either or all of them, on the ground that the investment earnings are not earnings in the State of Missouri, and are not in the contemplation of the statute; that the same are improper to be taken into account, and that if taken into account it would operate to deprive the plaintiffs, and each of them, of the guarantees of the Constitution of the United State, of the 14th Amendment, [fol. 2926] in that it would deprive them of their property without due process of law and deny them the equal protection of the law; upon the ground that to take into account earnings upon a division and activity of the plaintiffs entirely distinct from that here under contemplation, and not earned or created or made within the State of Missouri, is operative to deprive the plaintiffs, and each of them, of their constitutional rights as so mentioned. That the stat-

utes of the State of Missouri, if construed as to permit such taking of property, would itself be unconstitutional and that the statute as so construed is unconstitutional. On those grounds we object to receiving any evidence respecting supposed investment earnings.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted, and still except.)

A. In the use of the company figures on this chart, we may say that the figures on premiums, losses and expenses are the company figures used.

Mr. Barker:

Q. In this lawsuit?

A. In this lawsuit.

Q. The other figures you arrived at from the reports as filed in your office?

A. From the reports and from examinations by the department.

Q. Very well.

A. Investment earnings, $4,216,072; application of the now existing rate to the business from 1917 to '21, inclusive, $8,777,489. Total of the premiums written and investment earnings and application of the present rate, $96,495,742. [fol. 2927] Losses paid were $47,057,423. Expenses paid, $33,103,634. From the expenses we have deducted excess commissions in St. Louis of $3,745,157. Excess commissions paid by the Bureau Company, $148,304. Excess expenses paid for reinsurance, $3,757,598, or a total deduction of $7,651,059; leaving an expense of $25,452,575.

Mr. Folonie: We move to exclude so much of the answer as purports to deduct expense on account of commissions and reinsurance, on the ground that the same—expressly as to each—on the ground that the same is required by law, incompetent, and operates to deprive the plaintiffs and each of them of their property without due process of law and therefore in contravention of the constitutional guarantees already called to Your Honor's attention.

The Referee: Overruled.

Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted, and still except.)

Mr. Barker: Go ahead.

A. These earnings of $23,985,744—considering that the earnings as shown above, $23,985,744 we have charged for rating purposes the increased value of the agency plant of two million——

Mr. Folonie (interrupting): We object to any statement of what that supposed value is on the ground no basis is laid, and incompetent.

[fol. 2928] The Referee: It might be well——

Mr. Barker (interrupting): Testimony in this case says 25 per cent—by direct evidence.

The Referee: What rate is charged or used there?

A. 25 per cent of the unearned premium, which is 12½ per cent of the written premium.

The Referee: Proceed. Objection overruled.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted, and still except.)

Mr. Folonie: We challenge the statement that there is any evidence that amounts—that it is computed in the evidence on the basis stated by opposing counsel.

The Referee: The record will show. Proceed.

The Witness: The expense wrongfully charged for charity and war work, and so forth——

Mr. Folonie (interrupting): Object to any statement of that or any calculation of it, because there is no evidence that any such items are included in any of the figures here in evidence.

Mr. Barker: The testimony of Mr. McGee expressly shows it is.

The Referee: Overruled.

Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted, and still except.)

A. $1,199,278. The excess profit Federal Income Tax we were unable to estimate on account of the figures being run

[fol. 2929] together. That leaves a total earnings of $27,357,123. In arriving at this figure, the effect of over insurance, taking bad risks, rebates, multiple agencies, flat cancellations, credit system and preferential rating was not considered. The average capital of the companies allocated to Missouri——

Mr. Folonie (interrupting): Object to any evidence of allocation of capital as incompetent, and on the ground that a pretense of allocating capital opposes the theory of the right of the plaintiffs, and each of them, to charge a reasonable value for services rendered, is hereby sought to be denied and seeks to allot or charge the activities against capital at only a part thereof, whereas the entire capital is devoted to and responsible to the policyholders of Missouri; that a basis of calculation upon the base of capital is unwarranted, that a theory of allocation upon the basis of premiums is illogical and not supportable in fact. That any effort to so allocate capital and thereby seek to secure profits secured outside of the boundaries of the State of Missouri deprives the plaintiffs, and each and all of them, of their constitutional guaranties and rights guaranteed to them by the 14th Amendment to the Constitution of the United States, and guaranteed to them by the Constitution of the State of Missouri.

The Referee: Overruled.

Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted, and still except.)

[fol. 2930] A. The average capital that they allot to Missouri or allocated, $3,563,339. This is capital on the above statement—on the earnings as shown in above statement would have earned 767.73 per cent.

Q. In what period?

A. Five years.

Mr. Folonie: Move to strike that out on all the grounds urged to the questions entering into the total calculation.

The Referee: Overruled.

Mr. Folonie: It is not necessary to repeat them in detail, if the court please?

The Referee: Not at all; considered as so repeated.

(To which action and ruling of the referee, the plaintiffs, and each of them, by counsel, then and there at the time duly excepted, and still except.)

Mr. Barker: Q. The average surplus allocated to Missouri is $7,768,444——

Mr. Folonie: Move to strike out the answer as to allocation of surplus upon the same grounds.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted, and still except.)

The Witness: The total allocation of capital and surplus is $10,931,821.

Mr. Folonie: Move that be stricken out on the same grounds.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted, and still except.)

The Witness: The average capital and surplus earned on [fol. 2931] the above statement, 250.25 per cent.

Mr. Barker:

Q. What do you mean by that last answer?

A. 250.25—on the five years.

Q. Well, explain it. I don't understand it.

A. It means that with a surplus and capital of $10,931,821 for the five year period earned 250.25 per cent.

Q. Where?

A. In Missouri.

The Referee: That is, during the period of five years in question?

A. During the period of five years. The annual would be one-fifth of that, which would be fifty per cent a year.

Mr. Barker:

Q. If the earnings of the companies on the rates allowed for this five year period on that basis show an earning of about fifty per cent a year—that is what it shows?

A. On capital and surplus.

Q. You are apportioning your earnings to the capital and surplus?

A. In that particular case, yes.

Q. That is what I mean. All right, if you are through with that now. I now offer Exhibit Number 2,033.

Mr. Folonie: We object to it upon each and every of the grounds urged upon the presentation of the parts of it by the witness who testified respecting its contents.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs, by counsel, then and there at the time duly excepted, and still except.)

Mr. Barker:

[fol. 2932] Q. Mr. Folonie asked Mr. McGee with reference to the notice which you gave to the companies of your ten per cent reduction order, in which you recited some figures as premiums which had been given to you. Where did you get those figures?

A. I got them from the department.

Q. Under the Missouri statute no such notice is necessary.

Mr. Hogsett: Object to that as calling for a legal opinion.

Mr. Barker: Probably right. I withdraw that.

Mr. Folonie: Probably right—absolutely.

Mr. Barker: Well, I am not sure, but I will withdraw it. That is all, Mr. Folonie.

(The document marked Exhibit 2,033, so offered and received in evidence, is as follows, to-wit:)

[fol. 2933] Earnings 1917 to 1921, Inc.

Stock Fire Insurance Companies in Missouri

Net Premiums Written	.....	83,502,181	.....	.....
Investment Earnings	4,216,672	.....	.....	.....
App. Pres. Rate to 1917-122, Inc.	8,777,489	12,993,561	.....	.....
Losses Paid	.....	.....	.....	47,057,423
Expenses Paid	.....	.....	33,103,634	.....
Deduct Expenses	.....	.....	.....	.....
Excess Com. St. Louis, " " " Bureau Co.	3,745,157	.....	.....	.....
" " Exp. Reinsurance	148,304	.....	.....	.....
Earnings	3,757,598	.....	7,651,059	25,452,575
	.....	.....	.....	23,985,744
	.....	96,495,742	.....	96,495,744
" "	23,985,744	.....		
Agency Plant Increase	2,172,101	.....		
Exp.—(Charity War-work, etc.)	1,199,278	.....		
Fed. Income & Excess Profit Tax—(Unable to Estimate)	.....	.....		
Total Earnings	27,357,123	.....		
Av. Annual Capital Allotted in Missouri	.....	3,563,377	in 5 yrs., Earned 767.73%	
Av. An. Surplus Allotted Mo.	.....	7,368,444	in 5 yrs., Earned 371.27%	
Total Average Capital and Surplus	.....	10,933,821	in 5 yrs., Earned 250.25%	

NOTE: The effect of over-insurance, taking of bad risks, rebates, multiple agencies, flat cancellations, credit system & preferential rating was not considered in these figures.

[fol. 2934] (Whereupon an adjournment was taken until two o'clock in the afternoon of the same day, at which time parties reconvened at the same place, and the following proceedings were had:)

Mr. HYDE, recalled to the stand for further direct examination, having been previously duly sworn, testified as follows:

Direct examination (con't) by Mr. Barker:

Q. Mr. Hyde, I call your attention to Exhibit Number 2,634. The copy of the report is filed by the American Central Insurance Company in this lawsuit, Missouri state-[fol. 2935] ment of losses paid, and I call your attention to their statement: "As our losses are not kept to show losses on direct business and losses on estimated business, we are unable to make the proper segregation." Now, is there

anything in your reports that would prevent them from giving us that information?

A. We asked for this report in order that we might have subdivisions by which there could be a check made on reports already sent in. For instance, the underwriting experience by classes blank in the years in question, their losses were reported on direct business. Consequently they either could fill out this blank or else they improperly filled out the one they had sent in heretofore; because if they had the direct business or direct losses paid less only salvage, they must have the assumed reinsurance also to make up the total. Our object in getting the blank or trying to get it was to have a check on the losses—personal check.

Q. With the report submitted by that company, can you check them at all?

A. Well, they didn't submit any—no, sir. Eighty per cent of the companies did not make out that report; this blank.

Q. And with the lack of that information, the department couldn't check them in this lawsuit?

A. With the lack of that information we had nothing to check against the experience sheet.

Mr. Barker: I offer this Exhibit Number 2,034 in evidence.

Mr. Folonie: Let's see what it is about.

(Counsel for plaintiff examines Exhibit 2,034.)

[fol. 2936] Mr. Folonie: No objection to that.

(Exhibit 2,034 is as follows:)

[fol. 2937]

Missouri Statement of Losses Paid

Name of Company: American Central Ins. Co.

(Please drop cents.)

1917

	Fire and lightning	Hail	Tornado, windstorm, cyclone	All other classes	Total
Direct Losses Paid Less Salvage	.....	.....	.....	.....	.....
Assumed Reinsurance Losses Paid Less Salvage (Authorized Cos.)	.....	.....	.....	.....	.....
Total Losses Paid Less Salvage	.....	.....	.....	.....	.....
Deduct Reinsurance Recovered on Losses Paid (Authorized Cos.)	.....	.....	.....	.....	.....
Total Net Losses Paid	.....	.....	.....	.....	.....

1918

Direct Losses Paid Less Salvage	As our losses is not kept to show losses on direct business and losses on assumed business we are unable to make the proper segregation.				
Assumed Reinsurance Losses Paid Less Salvage (Authorized Cos.)					
Total Losses Paid Less Salvage					
Deduct Reinsurance Recovered on Losses Paid (Authorized Cos.)					
Total Net Losses Paid	.....	.....	.....	.....	.....

American Central Ins. Co.

1919

Direct Losses Paid Less Salvage	.....	.....	.....	.....	.....
Assumed Reinsurance Losses Paid Less Salvage (Authorized Cos.)	.....	.....	.....	.....	.....
Total Losses Paid Less Salvage	.....	.....	.....	.....	.....
Deduct Reinsurance Recovered on Losses Paid (Authorized Cos.)	.....	.....	.....	.....	.....
Total Net Losses Paid	.....	.....	.....	.....	.....

Missouri Statement of Losses Paid—Continued

	Fire and lightning	Hail	Tornado, windstorm, cyclone	All other classes	Total
1920					
Direct Losses Paid Less Salvage					
Assumed Reinsurance Losses Paid Less Salvage (Authorized Cos.)					
Total Losses Paid Less Salvage					
Deduct Reinsurance Recovered on Losses Paid (Authorized Cos.)					
Total Net Losses Paid					
1921					
Direct Losses Paid Less Salvage					
Assumed Reinsurance Losses Paid Less Salvage (Authorized Cos.)					
Total Losses Paid Less Salvage					
Deduct Reinsurance Recovered on Losses Paid (Authorized Cos.)					
Total Net Losses Paid					

[fol. 2937½] Clerk's certificate to Volume 3, omitted in printing.

[fol. 2938] Cross-examination by Mr. Folonie:

Q. Mr. Hyde, your underwriting by classes blanks for the various years 1917 to 1921, inclusive, were not inclusive of all classes of business, were they?

A. I know about that just what Mr. McGee said yesterday, and I think he probably told it right. I think that in some of the blanks there were classes or part of classes left out.

Q. All right. Now, I note that capital and surplus as you have it in Exhibit Number 2,033 are set forth at $10,931,821 as the combined figure.

A. Yes, sir.

Q. And in your—in making that computation, is that the capital and surplus of each of the years added together, or multiplied by five?

A. That is the average per year.

Q. You mean that ten million dollars is the average per year so that on the average it was for the five years fifty million dollars, by combining it year by year, is that what you mean?

A. If it was ten million for one year it would be fifty million for five years, yes.

Q. And this is a capital and surplus as existing during each of the five years all added together five times and divided again by five to bring it down to an annual figure, is that it?

A. That is all. That is on the $10,931,000 of capital and surplus, which would be the average investment for each [fol. 2939] year. In five years earned 250 per cent, according to that chart, or 50 per cent a year. If that is what you are trying to get at.

Q. I see you have an incurred figure of losses paid during the—figure of losses paid during the previous period of $47,057,743 and in the rate order here under review you recite that during the same period, namely, the five years in question, these companies paid losses in Missouri of $45,066,124. Did you get your computation of $45,000,000 in your order from the underwriting blanks?

A. Yes, sir.

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Q. Did you make this computation of forty-seven million that you have got in this exhibit in evidence here from the underwriting blanks?

A. From your figures.

Q. Well, in your order you have a recital that, "During said five years said stock companies collected on Missouri business net premiums amounting to $81,067,318." Where did you get that figure that you put into your rate order?

A. Got it from the rating department—tabulation of these underwriting blanks.

Q. Well, now, Mr. McGee has on this trial testified that those underwriting experience blanks show premiums of $77,897,768. Can you tell us how a discrepancy of about four million dollars would come about in two calculations made by your department from the same blanks?

Mr. Barker: We object to that as entirely different calculations.

Mr. Hogsett: Why, that is the same calculation.

[fol. 2940] Mr. Barker: Wait a minute, you will get a chance to argue this. Apparently different calculations because we have accepted in the chart whatever the figures submitted by Mr. Folonie and taken their figures and made a report on it. Now, the fact there is a regulated and non-regulated and so many different theories in it, shows clearly where the difference is, and this witness is not called upon to explain any difference between him and another witness.

Mr. Folonie: Counsel thoroughly misunderstands my question. My question was how he accounted for the difference of witness McGee's calculation as he testified to it here as to the underwriting experience blanks of premiums of seventy-seven million and the recital of the witness in his rate reduction order computed from the same blanks has eighty-one million. I am asking if he can explain the discrepancy and wherein it exists, and I think, it is entirely fair and proper to the witness to permit him to make an explanation if he can.

Mr. Barker: And I object, for the reason one witness is never called upon to straighten out his testimony with another witness. That is the duty of the court, and it would be interminable to ask one witness to——

Mr. Folonie (interrupting): This witness has testified from no figures at all except those prepared by or under the direction of the witness McGee.

Mr. Barker: My further objection is that the Missouri statute does not provide that experience or furnish us any [fol. 2941] guide in this case; each witness' testimony standing on its own feet.

The Referee: Overruled.

(To which action and ruling of the referee, the defendant, by counsel, then and there duly excepted, and still excepts.)

(Question read by the reporter.)

A. I cannot.

Mr. Folonie:

Q. Do you know which, if either, is correct?

Mr. Barker: We object to that, the witness has said he cannot explain it and it is immaterial as to which is exact because we have to take the experience in this lawsuit. This occurred before the lawsuit started.

Mr. Hogsett: If the court please, General Barker's suggestions of that kind are calculated to be confusing. We are talking about the figures in the underwriting blanks sworn to by Mr. McGee in this lawsuit. We are also talking about the figures by the defendant Hyde in his rate reduction order which all of his evidence shows came from the same blanks. We have been accused of having made discrepancies in figures. It appears now that there is a discrepancy of some five million dollars in the premium figures of the defendant himself in the rate reduction order under review, if the evidence of witness McGee is correct.

Mr. Barker: Yes, this witness made his determination differently from McGee and that shows the improper question.

[fol. 2942] The Referee: The pending question is which of these estimates is correct, if either?

Mr. Folonie: That is right.

Mr. Barker: And the lawsuit is being tried on an entirely different idea entirely.

The Referee: Overruled.

(To which action and ruling of the referee, the defendant, by counsel, then and there at the time duly excepted and still excepts.)

A. The tabulations given me by Mr. Allen on the classified losses were the $81,067,318.

Mr. Folonie:

Q. Well, now, do you know whether that was a correct calculation or not from those underwriting blanks?

A. I didn't make it. I have just the confidence that the head of a department is bound to have in his help, that is all.

Q. And that calculation was made under your direction by the head of the accounting department in your office?

A. Made by the chief rater.

Q. Well, is he a person experienced in calculations?

A. Yes, sir, I think so.

Q. Now, is Mr. McGee a person experienced in making the calculations?

Mr. Barker: Your Honor, that shows the fallaciousness of the questions. We object to that.

A. Yes, sir.

Mr. Folonie:

Q. I call your attention, Mr. Hyde, that the figures or calculation as given here as to the total of the losses—paid losses as shown by the underwriting blanks is here given by your assistant as $42,221,659 and in the rate reduction order [fol. 2943] you recite the paid losses as computed from those same blanks to be $45,066,124. Can you state which, if either, of those figures is a correct calculation from those blanks?

A. My position is the same as on premiums. I got them all from the same source, Mr. Allen.

Q. Can't you explain the discrepancy in those figures?

A. I don't know what the discrepancy is.

Q. Do you know which, if either of them, is a correct calculation from those blanks?

A. Only as I knew about the premium; they were given to me by Mr. Allen; in detail.

Q. Well, if Mr. Allen gave you figures on losses of forty-five million dollars and Mr. McGee gives you a calculation of losses from those same blanks of forty-two million dollars, which one is correct, if either?

A. I think that the—45—talking about losses now?

Q. Yes.

A. 45,066,124 would be my opinion of which is correct.

Q. Why do you think that is right rather than the other?

A. I know how Mr. Allen classified it and I don't know how Mr. McGee did. I don't know how he did it.

Q. Does your same answer apply as to the premium calculations?

A. Yes, sir.

Q. That is, according to your best judgment you think Mr. Allen's calculation of eight-one million dollars is right on premiums?

A. Yes, sir.

[fol. 2944] Q. You haven't made any computation yourself of either premiums or losses, I suppose, individually?

A. It is a long computation. Allen made it by classes—probably 150 or 80 classes and 150 to 160 companies, and that was what my rate order figures were taken from—and I think it is correct.

Q. Now, if, then the calculation of premiums computed from those underwriting blanks should be $81,000,000 instead of $77,000,000, that would make a premium income of about four million dollars more than Mr. McGee's calculation in round numbers?

A. Three million and something, yes.

Q. And the difference in the lost figures is approximately three million dollars, is it not—between forty two million and forty-five million?

A. Little less than three million.

Q. Now, on expenses Mr. McGee has given us a figure from the underwriting blanks of $30,371,234 and in your rate reduction order you recite expense as being $32,534,617. Can you explain that discrepancy?

A. No, sir; just the same reason as the other. The net showing or the net profit in the rate reduction order is less than it is in Mr. McGee's figures.

Q. Now, do you have any knowledge of the detail of the calculations made by Mr. McGee?

A. Not as to these——

Q. (Interrupting.) As to the figures I have been talking about?

A. Not as to these figures. I did not even know he had those figures. We intended to use your figures and draw [fol. 2945] our conclusions from those and I didn't know he had tabulated that.

Q. Well, a mistake in calculation from the same identical instrument of four million dollars more or less in premiums and three million dollars more or less in losses is in your judgment a very material difference, isn't it?

A. It is a material difference but I didn't use either figures in any of those calculations.

Q. Well, you used Mr. Allen's figures in determining to make the rate order here in question, didn't you?

A. To that extent.

Q. And if Mr. Allen's figures were in error, why, correspondingly, of course, your basis for making your rate reduction order would be in error?

A. If Mr. McGee's are right and Allen's are wrong, why, the profit would have been about $2,100,000 more than the way I figured it.

Mr. Barker:

Q. In favor of the companies, you mean?

A. Yes.

Mr. Folonie:

Q. And if both sets of figures are wrong, then you don't know what the result would be?

A. No, sir.

Q. You have given us an example of a bank loaning $100 made for six or eight per cent and which you said would cover profits and expenses. The bank upon investing or making a loan of $100 would be in receipt of an interest, though, of six per cent, or six dollars upon each $100 of money loaned, would they not?

A. Yes, sir.

[fol. 2946] Q. Now, you are appreciative, are you not, Mr. Hyde, that for the premiums which are received by stock fire insurance companies for doing their business, that they

assume to indemnify the property owner for an amount very much greater than the amount of the premium?

A. Yes, sir. My thought in that was this, Mr. Folonie, that the average losses being from 50 to 55 per cent, that on a thousand dollars premium the obligation of the company is only from $500 to $550. It seemed to me that four per cent ratio or $400 expense on an application which on the average could not exceed $500 was exorbitant.

Q. Well, a bank which loans out $100 and receives $6 by way of interest, its income from that business it transacts is $6, is it not?

A. If that is all it gets.

Q. Its income on that $100 is $6, is it not?

A. Yes.

Q. And if they have a total expense of $3, they have a fifty per cent expense ratio, don't they, upon their income?

A. Comes out of the six, though.

Q. But it would be fifty per cent on that $6 income?

A. Yes.

Q. If they had $3 expense in transacting that business, it would be a fifty per cent expense to income?

A. Yes.

Q. And if an insurance company takes in $100 and expense $50, it has an expense of 50 per cent to income, does it not?

A. But on their obligation they have 90 per cent.

[fol. 2947] Q. Do you assume that their obligation is measured by the indemnity that they undertake or not?

A. Their obligation—the real obligation is measured by what the average experience is that that obligation amounts to.

Q. Don't you think a bank in making its rate of charge, takes into account the obligation or risk of losing its capital, or part of it in its venture?

A. Of course, when they make a loan they realize there is some chance of losing their principal, but they do it for six or eight per cent, and an insurance company on their obligation they do it for about ninety per cent.

Q. Now, if an insurance company does business in your state and doesn't make any profit at all, they are not making 80 or 90 per cent, are they?

A. I am talking about expense and profit.

Q. Well, let's talk about profit for a minute. If a bank has a $6 income from its loan of $100, the most profit that it can make on that, if it had no expense at all, would be $6, would it not?

A. That is right.

Q. If an insurance company undertakes a policy of insurance for $10,000, and receives $100 premium, the most profit that can possibly be made out of that is $100, is it not?

A. Yes, sir.

Q. The bank in the event that its debtor fails to pay his debt would lose $100, would it not?

A. Yes, sir.

Q. And if the insurance company suffers a total loss of the property insured, it would in that case suffer a loss of $10,000?

A. If that is what they covered, but the insurance com- [fol. 2948] pany and all your figures are based upon what the average experience is so that average obligation under that premium would be about 50 to 55 per cent of the premium.

Q. You mean that the obligation of the company which it undertakes under its policy can never exceed the amount of the losses that it has experienced in the past in Missouri?

A. It can, but the average liability, which is the average on all these figures that we have produced here is an average condition. The average liability that they assume is about 55 per cent. Of course, in some cases it will run largely over, but on the average that is their liability and the point we were trying to make is that a business that has to have 90 per cent for expense alone is outrageous.

Q. And you assure that the companies here have an expense of 90 per cent of their premiums, do you?

A. 90 per cent of their average liability.

Q. Is expense?

A. Yes, sir; 88.

Q. All right.

The Referee: Is that expense only?

A. Well, it is in this case, Your Honor. For instance, I think the expense ratio could safely be called 40 per cent in this case. Now, they take $1,000 premium, their obligation or their liability on the average on that premium according to the average loss ratio is we will say, for round

figures, $500. That is what their average liability is. Now, it costs $400 in expenses alone according to their expense ratio to take care of the expense incidental to a liability of [fol. 2949] $500, which is nearly 90 per cent of their liability, which seems to me an absurdly high expense ratio. The point is that a bank for profit and expense both, on the liability—taking a chance of $500 will do it for $30 or $40 and the insurance company wants $400 for just the expense.

Mr. Leahy: Q. How much insurance does that premium of $100 represent?

A. It depends on the risk.

Mr. Leahy: Q. Wouldn't that be the extent of its liability?

A. The liability varies. That is what your average loss ratio shows.

Mr. Folonie: Q. That is your understanding of liability, is it? So that if a company had a policy for $10,000 upon a building and it went through the term of the policy and they didn't have any losses then they would have had no liability at all because no loss was suffered, is that your theory?

A. I said average liability.

Q. I know, but I am taking a specific case, if they had a $1,000 policy on a building and it went through the term and had no loss at all, they would have no liability because they didn't lose anything?

A. No, I don't think that follows.

Q. And if they lost $1,000 and had $100 premium, they would have had only $100 loss, because that is all the premium they had and you would ignore the other $900 above the premium they lost entirely?

A. No, your whole fabric of insurance is built up on the general averages and you must consider what the average loss is to find out what the average liability will be.

[fol. 2950] Q. So that fire losses and average liability mean identically the same thing to you, do they?

A. They do in this case.

Q. Well, are they identical terms, from your viewpoint?

A. I don't know as they are.

Q. Well, what is the difference, then?

A. I don't think there is any difference in this case as used here.

Q. Now, you have said that the companies cede more insurance than they assume?

A. Yes, sir.

Q. If the business is stated upon an authorized basis and only reinsurance be taken into consideration, which is in companies authorized to do business in the state, then the amount assumed and the amount ceded would be identical would they not—the companies altogether?

A. They would be identical, but there would be additional expense there on account of the process around from one place to another.

Q. That is not the question. My question was whether the assumed and ceded insurance would be the same if the reinsurance was all in authorized companies?

A. Yes, sir.

Q. And you in your statements which you require the companies to return to you in this state permit them to report their premiums to you only on the basis of an authorized reinsurance, do you not?

A. I think our experience sheets provide that they report the direct writings only.

Q. Now, in the annual statement and the tax return you require them to report their reinsurance in authorized companies, both ceded and assumed only in so far as authorized [fol. 2651] companies are concerned, do you not?

A. I think that is correct. You will have to show me the annual statement there.

Q. Now, you have mentioned that reinsurance was applicable only to risks of considerable magnitude and that it doesn't help the small insurer, as you suggested. Don't you know, Mr. Hyde, that the large part of the reinsurance business in this state is upon term business?

A. I put the word "necessary" in there. I think that on a small risk where it is less than the net retention of the company, that there is no necessity for reinsuring. That reinsurance as practiced today by the companies pyramids the expense as far as rating purposes are concerned—and never was intended that any middle men come into the operation between the company and the insured.

Q. Don't you recognize the fact that when a risk is offered to a small company with limited capital and the amount at risk is such that considering its capital it is unable to carry it all, that as a reasonable measure of com-

petition of the small company against the large company that it is to the interest of the small company to take that insurance and reinsure it and divide it among others so that it may acquire that business initially which but for the reinsurance privilege it would have to decline and let go to some larger insurer?

A. I think the reason why you have no companies in the west or middle west today is reinsurance pure and simple: that the small company cannot get started and never will [fol. 2952] get started and has not gotten started because of the reason that in taking a large risk and reinsuring it, it is so expensive to carry the part that he has to reinsure that he can't afford to take any.

Q. Now, if he had no reinsurance facilities at all, would the small insurance company take the risk of large magnitude initially at all?

A. He couldn't take them at all, but you have none here in the west.

Q. Have no what? Fire insurance companies practically?

A. Well, might be three or four.

Q. You know they exist in fact?

A. Well, we haven't in Missouri, for instance, that are not owned in Europe, New York, Hartford or something.

Q. Don't you know that there are a half dozen independent insurance companies in the State of Illinois that have sprung up in the last ten years doing business in this state?

A. Well, there are a few over there, I guess.

Q. Well, you know the Marquette for one?

A. They are of no volume.

Q. Chicago Fire and Marine for another?

A. I know the Marquette. I am not familiar with the Chicago Fire and Marine. We tabulated this reinsurance expense on the theory that any profit made by the reinsurance company—or put it the other way—that any expense of the reinsurance plus their profit necessarily was a deduction improper to a proper rating because certainly the direct company lost whatever the reinsuring company makes plus reinsuring company's profit.

[fol. 2953] Q. Now, if, Mr. Hyde, the calculations produced by the plaintiffs do not take into account unauthorized insurance at all but only authorized in reinsurance,

then your tabulations and calculations here respecting the greater volume of risks ceded are ineffective and of no value here, are they—if that is true in fact?

A. Why, we have taken our calculations on the non-admitted.

Q. Yes, but I say if the calculations of the plaintiffs are upon an admitted basis, then your calculations as to the excess or ceded over assumed are of no value in this case, are they? Don't have any bearing on it in that event?

A. Well, they have a bearing. If any business the company—the direct writing company on the stuff ceded to an unauthorized company take—if not a loss there is a situation—their net result is short just what the ceding company's expense is and what its profit is.

Q. Well, that doesn't enter into it if that expense is not incorporated in the figures here at all, but is treated as a direct writing business and so retained, is it?

A. Not if it is all retained.

Q. Well, now, on the—coming to the subject of earned premiums and written premiums, as I understand you, you advocate a basis of calculation on a written premium basis eliminating the earned premium basis from consideration?

A. Yes, sir——

Q. (Interrupting.) Is that right? Now, I will ask you whether if you should adopt a written premium basis for doing your business with insurance companies, whether the following result would not occur: a company entering [fol. 2959] this state, you made all your calculations upon a written basis and showed a profit on that basis and set up no unearned reserve at all, and treated all the premium as earned, it could readily be that such a company would be entirely insolvent and still appear by such a computation to have been making money in this state, isn't that true?

A. I don't think the solvency enters into the rating proposition at all.

Q. Well, I wish you would answer the question first and then if necessary you can explain. Is it not a fact that if a company doing business for a given period, you made a computation on the written premium basis and it wrote a large volume of term business, you have figured it all on a written basis, demonstrated a profit of say ten per

cent on their business, that it might be that company would be so impaired as to be in fact insolvent although your figures would show that it was making a profit?

A. Our figures would not show a profit. They would show whether or not the rate was too large or not.

Q. Well, applying the rate as it existed, if a company, we will say, had a capital of a million dollars, and that company during the year did a volume of business of a million dollars, it started with no surplus, it did a volume of business of a million dollars during the year, it has paid expenses and it has paid losses with $900,000, then on your method of calculation it would show them with $100,000 profit, would it not?

A. Yes.

Q. Now, that same company which had——

A. (Interrupting.) That is underwriting profit.

[fol. 2955] Q. Now, that same company having done business for one year and taking in a million dollars of premiums, all on five-year business, would according to the standards of solvency as they now exist in the State of Missouri, be an insolvent company would it not — its capital be impaired?

A. Yes, capital would be impaired because they have set up a reserve as a safeguard to solvency that they couldn't set up without impairing their capital.

Q. Well, their capital would in fact be impaired on that business, wouldn't it?

A. If they set up a reserve they would.

Q. Would you allow that company which had made $100,000 profit on your theory in that year, would you permit it in that state of affairs, having started with a million dollars capital in the beginning of the year, done a million dollars worth of business, paid out expenses and losses of $900,000, and had all of this business on a five-year basis, would you permit that company to do business in this state?

A. We couldn't permit it under the law but — on account of the statute providing a legal reserve which they would have to set up, but it wouldn't necessarily mean they were insolvent because it would have a profit in its reserve.

Q. Now, if that company, then, were in that given status, you would be compelled under the law, although they had made $100,000 profit during that year on your business,

you would be compelled to refuse to license that company in the state because they were insolvent, wouldn't you?

A. We would never license them in the first place because a million dollar company with no surplus could be licensed by any commissioner.

[fol. 2956] Q. Why should they have a surplus if they could make $100,000 in the first year?

A. Well, on setting up the reserve the obligation is——

Q. (Interrupting.) Why bother to set up any reserve?

A. Well, why have a statute or anything else?

Q. I think that is a pretty good answer. In other words, by the statute of the State of Missouri, a company which started with a capital and with a business profitable on your theory of accounting would on the very first policy they wrote become insolvent, would it—if it started with no surplus and wrote one five-year policy?

A. It would on your theory, too; couldn't set up a surplus.

Q. Why set up any reserves under your theory of doing this busin-ss?

A. Because the state Legislature thinks that safeguard to solvency should be adhered to and it undoubtedly should—some——

Q. Why should they put up a reserve when they have paid all the losses that have been reported to them during the year and they have paid all their expenses and they still have money left over—why should they put up a reserve?

A. Because the legislative body——

Q. No, I mean aside from the Legislature. Why, in your judgment, should they set up a reserve?

A. Well, if they had a million dollars unimpaired there is no physical reason why they should because they certainly would be good on one policy with a million dollars.

Q. All right, suppose they had a half million dollars premiums on their books, why should they set up any reserve?

A. Well, if their securities were all gilt-edged and they [fol. 2957] had a million dollar capital, why, there is no solvency reason why they should, outside of the safeguard considered necessary by the law.

Q. That is, as far as your judgment is concerned, if there were no statute on it you would not think they would need any?

A. Not if they had a half a million dollars in excess of their liabilities, good.

Q. And then if that company quit doing business at the end of the year and they had a premium business of a million dollars, four-fifths of which was still to run in the future—well, they would have nine-tenths of it to run in the future on a pro rata basis—reserve on five-year business is $90, isn't it, on the hundred?

A. Yes.

Q. Well, if they had one million dollars worth of business and they had set up no reserve and all those policies were canceled on the first day after the end of the year, they would have to pay back $900,000, wouldn't they?

A. If they were all written at the same time, they would have to pay back nine-tenths of them, yes—wait a minute—before the person is—five years they would have to pay back four-fifths. But that is a contingency that never did happen and I don't suppose ever could happen.

Q. And if they did not pay it back they would have to carry on any pay losses, wouldn't they, until the policies ran off?

A. Yes.

Q. And pay the expense of running them?

A. Yes, sir, or reinsure it.

Q. Well, you wouldn't advocate their reinsuring it, as expensive as that is, would you?

A. They could reinsure it at a profit to them.

[fol. 2958] Q. You don't mean a company can make a profit out of reinsuring its business, do you? I thought it always suffered a loss on that?

A. Not off of their reinsurance reserve they don't.

Q. Now, is it a fact that a company which cedes reinsurance to another company makes or loses by it—does it make a profit or suffer a loss when it cedes reinsurance to another company?

A. In the average companies I think they suffer a loss; they certainly suffer this kind of a loss, that their net retention in revenue is not the same as if they had kept the business. In other words, whatever the ceding company's expense is and profit is on the business, if they had not ceded it they would have retained.

Q. How long has the earned premium basis of calculating——

The Referee (interrupting): Pardon me. In that last answer, Mr. Hyde, did you mean the ceding company or the assuming company would retain the——

A. (Interrupting.) Well, the company who cedes the business, which is the direct writing company——

The Referee (interrupting): Yes?

A. (Continuing:) —that cedes it to some other company, their loss on that business is wha-ever the company that assumed it—the expense was plus any profit they might have made because that would have all stayed with them if they had not ceded it.

[fol. 2959] The Referee: Then your theory is that if there had been no cessation, the writing company would have retained and profited to the extent of the expense and profit incurred by the assuming company?

A. Yes, whatever their expense incurred was and whatever their profit retained was.

Mr. Leahy: Provided there was no fire.

The Witness: Average we are talking again.

The Referee: Certainly.

The Witness: The situation is this: on a business ceded they get 25 to 30 per cent, that is all they get back. They do all the work incidental to that policy and their own expense ratio we will say is 40 per cent. The point I am getting at is how can it take care of this other business for this company for 25 or 30 per cent, when their own business costs them 40 to 45. The truth about the matter is it increases the direct company's own expense ration or own expense item.

The Referee: I think I understand your theory. I was not quite sure whether you had correctly expressed in your last preceding answer. Proceed. Proceed, Mr. Folonie.

Mr. Folonie:

Q. How long to your knowledge has the earned premium basis been imposed on the companies by annual statement blanks sent them by the Insurance Departments of the various states of the United States?

A. The expenses of the annual statement——

Q. (Interrupting.) No, how many years is my question?

[fol. 2960] Mr. Barker: Speaking about the annual statement blank?

Mr. Folonie: Yes.

A. Can I explain it afterwards?

Mr. Folonie: Yes, but I want an answer first, though.

A. Well, to my direct knowledge only since the time I have been in office although——

Q. (Interrupting.) How long is that?

A. About three years.

Q. Didn't you know about annual statement blanks before that time?

A. I knew about them, but I didn't know they had any earned premium in them or not.

Q. You had read them through, hadn't you?

A. Annual statements?

Q. Yes.

A. No.

Q. Never read through the blank?

A. No.

Q. Never read through the blank to know it had a provision requiring earned premiums before you went into office?

A. No, sir.

Q. What was your business before you went into office?

A. Investment business.

Q. What had been your connection with the insurance business before that time?

A. Hadn't had any.

Q. By that you mean except, I suppose, you had taken policies of insurance as a person insured?

A. Yes.

Q. Did you have any other knowledge of the insurance business except that before you went into office?

A. Just general, that is all.

[fol. 2961] Q. What do you mean by that? What was it?

A. Oh, well, I studied the different forms of insurance and was fairly familiar with the different forms of profit-sharing and stock fire and those kind of things.

Q. Where did you study it?

A. Oh, just reading; no particular place.

Q. Connected with any company?

A. No.

Q. No agency?

A. No.

Q. Were you in it as a business in any way?

A. No.

Q. You had read about it just as a matter of general interest?

A. Yes.

Q. Newspapers mostly?

A. Well I don't know—whether newspapers; just general—I had a general knowledge of what the different fellows claimed through solicitation of the business and those kind of things.

Q. You mean what the person who solicited you to take insurance told you about it?

A. Yes, and managers of companies.

Q. What did you have to do with managers of companies before you went into office?

A. Just knew them personally is all.

Q. Where, here at Kansas City?

A. Yes.

Q. Who were they?

A. Well, Harvey for one, stock company man; and Bardwell, and I don't know just who.

Q. Who is Harvey?

A. Well, he is a president or vice-president—I don't know—he used to own the American Merchants Fire, I think it was reinsured here, I think.

[fol. 2962] Q. Where was its home office?

A. Here.

Q. Is it in business any more?

A. No.

Q. You say "we reinsured them," who is "we"?

A. I mean reinsured since I was in office; by Bardwell.

Q. Bardwell was a reciprocal man, wasn't he?

A. President of the Liberty Fire in St. Louis.

Q. Later on, yes, but he was in the reciprocal business, wasn't he?

A. I don't think so. I think it was licensed under Harty first.

Q. The Liberty has gone out of business, too, hasn't it?

A. Supposed to yesterday, I don't know whether it did or not.

Q. Were—did those two companies you were familiar with that have both gone out of business, did they use the written pemium basis?

A. I don't know about that.

Q. Is that why they went out of business?

A. I couldn't tell you about that.

Q. Did you ever have any acquaintance with anybody that stayed in the insurance business?

A. Yes.

Q. Who was that?

A. Both these fellows I told you about are still in the business.

Q. Yes, but their companies are gone?

A. Well, Harvey is in the business yet.

Q. What is he doing now?

A. He is a reciprocal now. Bardwell is general agent for this Illinois group over there, with the Marquette. I know a great many insurance men here in town; if you want me to get a telephone book I will look them up.

[fol. 2963] Q. Well, do you have to get a telephone book to look them up, do you know them as slightly as that? Bruce Dodson didn't occur to your mind at all, did he?

A. He is in the business, yes; and Tom Mastin.

Q. He is a reciprocal man, isn't he?

A. Yes.

Q. Charlie Howell?

A. He is not in the insurance business.

Q. Well, pretty much in it—he is attorney for the reciprocals, isn't he?

A. Yes.

Q. A good friend of yours, isn't he?

A. Talk to him once in a while.

Q. Consult him about this lawsuit?

A. No, sir.

Q. Some?

A. No.

Q. You say you don't know whether the earned premium basis was used—how long it was used before the time you came in office in the annual statement blanks of the various states?

A. I don't know just how long, ten or twelve years, anyhow.

Q. How long has it been used in the State of Missouri to your knowledge?

A. It has been asked for in the annual statement blank for the same length of time that I testified to.

Q. That is three years?

A. Longer than that I know, but how much longer I don't know.

Q. In the various reading you did to inform yourself about the science of insurance you didn't go back to look at the annual statement blanks in the years prior to your entry into office?

A. I have looked at them.

[fol. 2964] Q. As far as insurance is concerned, it had its origin, as far as you are concerned, when you entered the office of Insurance Superintendent—didn't exist as far as you were concerned prior to that?

A. I would hardly say that.

Mr. Folonie: That is all with this witness.

The Witness: I want to make an explanation about the annual statement.

Mr. Barker: Q. About the annual statement, that is a financial statement which reflects the solvency of the company?

A. Yes, sir.

Mr. Barker: Q. You are not contending that the earned basis is not all right to reflect the solvency of the companies?

A. No, sir. The annual statement, if you will allow me to explain, is a uniform statement gotten out so—that all the states use it. A great many of the states supplement it with additional blanks to get the information in the form they wish. It does not necessarily mean because the earned statement appears in Missouri's annual statement blank that Missouri has ever used that system because it never has and has always asked for the experience on the written basis and on the losses paid.

Redirect examination by Mr. Barker:

Q. I will get to that. The underwriting blank, is that the blank on which you determine the rate-making theory?

A. Yes, sir.

Q. And that calls for these companies to report on a written basis?

A. Yes, sir.

[fol. 2965] Q. And they report on a written basis?

A. Yes, sir.

Q. And it is nothing new for them to report on a written basis—they are used to it, aren't they?

A. Yes, sir.

Q. And Missouri has always compelled them to report on a written basis?

A. Ever since I have been in.

Q. The company can operate on the written basis just the same as on an earned basis without affecting its solvency?

A. Yes, sir; just a matter of rate-making and not solvency.

Q. The companies then on one blank report on the earned basis, and that is the financial statement?

A. Yes, sir.

Q. And on the underwriting statement which affects their rate they have always reported to Missouri on the written basis?

A. Yes, sir. I might say here that of these three blanks there is only just the underwriting statement that could possibly be used for rate-making for the reason that in no other blank do they attempt to give an expense, and without the expense you certainly could not arrive at the underwriting profit or loss.

Q. Now, then, you heard Mr. Froggatt testify in New York, didn't you?

A. Part of it.

Q. You heard the witness state he had been indicted for falsifying records?

Mr. Folonie: Object. There is no such testimony and it is highly improper besides, and we object to it.

The Referee: Sustained.

[fol. 2966] (To which action and ruling of the referee, the defendant, by counsel, then and there at the time duly excepted and still excepts.)

Mr. Barker:

Q. Now, Mr. Howell and Mr. Dodson and these fellows are about as good men as Mr. Folonie's associates, aren't they?

A. Yes, sir.

Mr. Folonie: Object to that.
The Referee: Sustained.

(To which action and ruling of the referee, the defendant, by counsel, then and there at the time duly excepted and still excepts.)

Mr. Barker:

Q. Nothing wrong with Mr. Howell and these men, is there?

Mr. Folonie: Object to that, too.
The Referee: Sustained.

(To which action and ruling of the referee, the defendant, by counsel, then and there at the time duly excepted and still excepts.)

Mr. Barker: Are they as good men as Mr. Froggatt, do you think?

Mr. Folonie: Object to that.
The Referee: Sustained.

(To which action and ruling of the referee, the defendant, by counsel, then and there at the time duly excepted and still excepts.)

Mr. Barker: I believe that is all.

[fol. 2967] Recross-examination by Mr. Folonie:

Q. You say the annual statement is purely a financial statement, Mr. Hyde—although the words did not originate with you. I will ask you whether at page 10 of the annual statement blank, as I exhibited it to you here, is it not headed, "Underwriting exhibit?"

Mr. Barker: No, no. Wait a minute. Read it.

A. To save time—"Investment exhibit." I might say these annual statements, to be uniform, try to cover all the information required by any of the states. The consequence is that information in some of it is different than required by other states. When I said that the annual statement only had underwriting—or only had financial matters in it, as far as we ever use it is concerned, is in a financial way, and that is because we have another blank that we use for determining the underwriting profit and do not use the annual statement. The reason for the other blank is——

Mr. Folonie (interrupting): That is all interesting, but does not answer the question.

Q. Don't the words appear on this sheet, "underwriting exhibit" right where I am pointing?

A. (Witness examining document.) Yes.

Q. Isn't it subdivided into "Premiums" as the first heading under that?

A. Yes, sir.

Q. And doesn't it require, "Total premiums." "Unearned premiums," "Beginning," "Unearned premiums at the end," with concluding part, "Premiums earned during the year?"

A. It does as a whole.

{fol. 2968} Q. And doesn't it require you to give—isn't the next heading, "Underwriting profit and lost items?"

A. Yes, sir.

Q. And doesn't it require the companies to put the losses on the incurred basis?

A. Yes, sir, as a whole.

Q. Doesn't it require them to put the expenses there on the incurred basis?

A. It requests that, yes.

Q. And doesn't it require you to put profit or loss from underwriting as the last item on that page?

A. As a whole.

Q. And then doesn't the next page go with the group of investment exhibits and separately show that on the next sheet?

A. Yes, sir.

Mr. Barker: Three-fourths of this blank is devoted to the financial statement, is it?

A. I think so, yes, sir.

Mr. Folonie: I want the record to show the General retracts 25 per cent of his previous statement.

Mr. Barker:

Q. Start with page 1, anything on page 1 about underwriting experience?

A. No, sir.

Q. Anything on page two about underwriting experience?

A. No, sir.

Q. Anything on page 3——

Mr. Hogsett (interrupting): We make the objection that this is all immaterial because the document is in evidence and is the best evidence.

Mr. Barker: That would be very fair for you to let Mr. Folonie ask about it and not me.

Mr. Hogsett: You are just wasting time. Now, that is the net of it.

[fol. 2969] The Referee: If the document itself is in evidence, what need of proving its contents by the witness?

Mr. Barker: Because, Mr. Folonie took one isolated page and called his attention to it just now, to page Number 10.

The Referee: But the whole document is before the court, is it not?

Mr. Barker: Yes.

The Referee: And is not the court probably as competent to determine its contents as the witness?

Mr. Barker: Yes, but I would like to get it in the record that only one page out of 40 is devoted to what Mr. Folonie says is in the record.

The Referee: The whole document is in the record.

Mr. Barker: May I show it to the court, then?

The Referee: Yes.

(Counsel for defendant exhibits document to the court.)

Mr. Barker:

Q. Now, Mr. Hyde, then only one page in Exhibit 1 is devoted to anything connected with underwriting?

A. I will say very few pages, anyhow.

Mr. Barker: Well, if you have any more there, look it over.

Mr. Hogsett: We object, for the reason the document is the best evidence.

The Referee: I think the whole document being in evidence, that it is unnecessary to consume time to proving its contents.

[fol. 2970] Mr. Barker: All right, I withdraw that. Exhibit Number 1, the annual statement, do you consider that at all in figuring the underwriting activities of the companies in this state, Mr. Hyde?

Mr. Folonie: We object to it as needless reiteration. He has answered that at least four times this afternoon.

A. We do not.

Mr. Barker:

Q. Is it of any value to you at all in figuring the underwriting activities of the company within the state?

A. It is not.

Mr. Folonie: We object; sixth time.

Mr. Barker:

Q. What blank alone do you use in figuring the underwriting activities in the state?

A. Underwriting experience by classes blank.

The Barker: I believe that is all.

Mr. Folonie: That is all.

The Referee: Through with this witness, gentlemen?

Mr. Folonie: Yes.

Mr. Barker: I believe, Your Honor, that that will conclude the hearing here.

(Witness excused.)

(Whereupon an adjournment was taken until Monday, May 26, A. D. 1924, to meet then at the time and place last above indicated.)

(Thereafter, pursuant to adjournment of counsel, and upon order of the referee, the further hearing was continued until Tuesday, May 27, 1924, at which time parties [fol. 2971] reconvened at Kansas City, Missouri, at the Kansas City Athletic Club, Room 1109, and the following proceedings were had:)

Appearances: Same as before.

The Referee: Proceed, gentlemen.

Mr. Barker: I will have Mr. Revelle sworn, please.

Charles G. Revelle, called as a witness on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. Barker:

Q. Give the stenographer your name?

A. Charles G. Revelle.

Q. Where do you live?

A. St. Louis, Missouri.

Q. You were at one time the assistant attorney general in Missouri?

A. I was.

Q. Were you an insurance commissioner in Missouri?

A. Yes. I believe the official designation at that time was Superintendent of the Insurance Department.

Q. When were you appointed to that position?

A. Well, my recollection is I was appointed at a time—that I qualified and took charge of the department the 1st of March, I believe, 1913.

Q. Who did you succeed?

A. Frank Blake.

Q. How long did you remain as superintendent of the insurance department of Missouri?

A. I resigned I think about the 11th or 12th day of August, 1915.

Q. What position if any did you assume then?

A. I was appointed as a member of the Supreme Court. [fol. 2972] Q. One of the judges of the Supreme Court of Missouri?

A. Yes, sir.

Q. And you held that position until the 1st of January, 1917?

A. That is correct.

Q. Now, do you remember the passing of the Missouri Insurance Rating act in 1915?

A. I do.

Q. You were the superintendent of the Insurance Department at that time?

A. I was.

Q. Did you have anything to do with the preparation or aid in the passing of that act?

A. I did.

Q. Explain to the court how the act was passed and why.

A. Well, as briefly as I can state, really, the situation leading up to it was about this: Immediately after I took charge of the department the fire companies withdrew from Missouri because of what they regarded as adverse and intolerable legislation. There was a period of some months, I don't recall exactly what period, when substantially all of the stock companies were out of the state.

In an effort to bring about a satisfactory situation the governor appointed a commission consisting of five members, of which I was one, to go into the fire insurance situation in Missouri and to propose some legislation which in our opinion would be sane and perhaps satisfactory to both the public and the companies.

That commission functioned by conducting hearings over the state and by having numerous conferences with agents and with a committee representing the fire companies. That continued for a period of months. Those meetings being held from time to time.

[fol. 2973] After all of that was done there was a report made by the commisison to the governor, and after that report was filed I then drafted what is the present rating act, except for certain amendments that have been made since that time.

Q. In preparing that act, did you cooperate and work with the insurance companies?

A. We did. We held conferences with a committee which at that time, as I recall it, was composed of Harry Smith of the National, and Mr. Dave Rumsey of the Continental, and Charley Sheldon, I believe, of the American—isn't he? And at these conferences Judge O. B. Ryan was also frequently in attendance.

Q. Who is Judge O. B. Ryan?

A. Well, at that time he was I think the general counsel for the National Board of Fire Underwriters. I don't know whether he still has that position or not. It is my recollection of his position at that time. He was, at least, counsel in some capacity for either the companies directly or for some organization composed of the companies.

Q. And as a result of those conferences this present law was passed?

A. Yes. The result of those conferences, as well as conferences that we held over the whole state with business men and members of the chambers of commerce, and, in fact, such of the public as we could induce to attend our public meetings and conferences.

Q. Now, at the time of the passage of this rating act in 1915 and before that time, what reports, if any, did the insurance companies make to the Insurance Department of Missouri?

A. You mean regular reports?

[fol. 2974] Q. Yes, regular reports.

A. Well, they made their annual statement, which was a statement made on the convention form of report, and they made their premium tax statement.

Q. Those were the only two regular reports that they made?

A. That is my recollection.

Q. Now, the annual tax statement which they made prior to that time was made on what basis, with reference to premiums?

A. Basis of premiums received.

Q. Now, the annual statement on the convention form of blank, which was made at that time, with reference to the Missouri experience, was made on what basis?

A. Premiums received.

Mr. Hogsett: If the court please, we think that that is indicated already by the exhibits that are in evidence and they are the best evidence.

Mr. Barker: Before that time, we are speaking of.

Mr. Folonie: We object to it as too remote and immaterial.

The Referee: Prior to 1917?

Mr. Barker: Yes. Prior to the passage of the rating act.

Mr. Hogsett: Then it is wholly immaterial, because the rating act is the guide by which we are controlled.

The Referee: Overruled.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

[fol. 2975] The Witness: Your question was as to their reports on Missouri business?

Mr. Barker:

Q. Yes, the annual statement as to Missouri business—on the premium received basis?

A. That is correct.

Q. Now, after the passage of the rating in '15, did the department prepare an underwriting report for the companies to submit to the department in times to come?

A. Yes. It prepared a blank report for the purpose of meeting the provisions, in its opinion, of the Rating Act.

Q. And on what basis were the companies required to report on the underwriting blank as prepared by the department after the passage of the Rating Act?

A. Premiums received.

Q. Why?

Mr. Folonie: We object to it as calling for an incompetent conclusion.

The Referee: The witness is qualified, I think, to give a conclusion and opinion. Overruled.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

A. Well, it was for two reasons. The second involved numerous reasons. The first reason was because that was

the interpretation placed by the department at that time upon the provisions of the Rating Act. Then in pursuance of what the department regarded as its function under the Rating Act it asked for the premiums received, because [fol. 2976] of its belief that that was the basis upon which the premiums should be reported, and should be calculated, under the Rating Act.

Mr. Barker:

Q. In arriving at an underwriting profit or loss?

A. Yes, sir.

Q. That was the departmental ruling while you were Superintendent of Insurance?

A. It was. That was my interpretation of it.

Mr. Folonie: We object to a characterization of it as a ruling. The witness said it was their interpretation; not a ruling.

The Referee: The record, I think, is clear; that it was the interpretation of the department rather than a formal rule promulgated by the department.

Mr. Folonie: I made the objection so that attention might be called to it so that it might not hereafter prove misleading.

The Referee: Yes.

Mr. Barker:

Q. Did the insurance companies, at the time of the conferences before the passage of this law, and during the time it was being passed, and after it was passed, and while you were Superintendent of Insurance, make any contention that underwriting profit or loss should be figured on an earned premium basis rather than a written premium basis?

Mr. Folonie: We object, if the court please, on the ground that identity of parties is not in any wise shown; that the same is leading and suggestive, because it implies that any issue as to propriety of one basis or another was under discussion; because it is long anterior to the time here in [fol. 2977] question, and because any contentions then made by any parties would not be binding upon any of the parties here.

Mr. Barker: It is not offered for the purpose of being binding, but merely to explain the situation which existed, in view of the fact that a department ruling, observation or interpretation is not in any sense binding upon courts, but it is usually held at least to be presuasive, and it is offered solely for that purpose.

Mr. Hogsett: I suggest that it does not meet the point that counsel suggests, and for this reason: It might be the interpretation of the department to require a report of premiums written—in fact it is natural that it should require that—but from that basis calculations can be made as to premiums earned.

Mr. Barker: Well, we will show that they cannot be. This is preliminary to showing they cannot be.

Mr. Hogsett: The evidence in this case so far on both sides shows it can be and has been done.

Mr. Barker: It shows it cannot be and it can't be under this ruling.

Mr. Hogsett: Both.

Mr. Barker: Our theory is that there is nothing in the report to Missouri which would figure as earned premium basis.

The Referee: Read the question, Mr. Blume.

(Question read by the reporter.)

The Referee: General, I think it should be shown at least that the parties plaintiff here were then interested in the matter.

[fol. 2978] (To which action and ruling of the referee defendant by counsel then and there at the time duly excepted and still excepts.)

Mr. Barker: Well, it is in the record. We will put it in again. The same companies exactly.

The Referee: Is there any dispute about that matter?

Mr. Folonie: Very decidedly. Many of the plaintiffs here were not even admitted to the state at that time. A great portion of them have been admitted since. No identity of parties. Impossible to be shown because it does not exist in fact.

Mr. Barker: Well, we will show that it is.

Q. At the time of the passage of the Rating Act in 1915, do you know approximately how many stock fire insurance companies were doing business in Missouri?

A. I don't recall, General. I know that there was a large number.

Q. The record in the Surcharge case as reported in the 278th Missouri, 1919, case having been tried in the early part of 1918, reports 140 stock companies.

A. Well, that approximately is my recollection, but it is a recollection and approximation on my part.

Q. But your conferences were intended to and did include all of the stock companies doing business in Missouri?

A. My understanding of it was that the gentlemen whose names I have mentioned represented the stock companies in the matter pertaining to the controversy that we were then having, and in the matter pertaining to proposed legislation.

[fol. 2979] Q. Many of these stock fire companies in this suit also appear as having been in the state at that time, would you judge?

A. Well, I perhaps would recall the names of some of them, General Barker. It has been a long time of course. I can recall that perhaps only just through generalities.

The Referee: Is there any question here, gentlemen, as to whether or not a considerable proportion of the companies which are now parties plaintiff in this action were then engaged in the insurance business in Missouri?

Mr. Folonie: Certainly that is admitted. There were many of these companies, I should say at least more than half of the companies now in the state, of the stock fire companies which have been in the state since 1915 and even before that time.

Mr. Barker: Our proof shows that.

Mr. Folonie: A proportion of the companies have entered the state since, and some of them of course have been organized since.

The Referee: Yes. Overruled.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

The Witness: Now what is the question?

(Question read by the reporter.)

A. I might say that my conferences with representatives of the companies were limited, as I would call it, practically wholly to conferences at the time that we were trying to [fol. 2980] draft the measure and the time that we were bringing about the enactment of the measure rather than conferences prior to that time.

Mr. Folonie: Pardon me, didn't you misspeak? You mean rather than subsequent to that time?

A. Yes, rather than subsequent to the passage. My recollection is that my conferences as to the measure after its passage and its effective date, and conferences that were held after the passage but before the effective date, with a view to giving it effect upon the effective date, were limited to representatives of the rating bureau; but during the passage of the act and prior to that time our conferences were with the committee representing the fire companies that I have mentioned. Now, I have no recollection in the world of a suggestion having been made of the rate being figured upon any basis other than the premiums received. I recall that in connection with the proposed draft of the measure, that after further conference with the representatives of the companies, that Judge Ryan mailed me a draft of a bill which he thought should be introduced. I received that, as I received suggestions from anybody that I could get them from. I took his draft, and I cut out a good many things, and I added a good many things. So far as the bill which was finally enacted, so far as the language of it with reference to what they should report—losses paid and premiums received—it was left as Judge Ryan had fixed it, and I never heard, although during our conferences the subject of unearned premiums was up several times in connection with two phases, first in connection with the mat- [fol. 2981] ter of the funds that they should account for earnings on, we discussed the unearned premium in that connection. We also incidentally discussed the question of whether or not our tax laws should not be changed and should not be based upon the earned premiums rather than the premiums received during the period. The subject was

discussed with me frequently as to those two things, but there was never a discussion or a suggestion that the earned premiums be used as the basis in the Rating Act. If there was, I have no recollection in the world of it.

Mr. Folonie: We move to strike it all out as incompetent and as anterior to the passage of the act under which this case must be tried, and anterior to the period here in controversy, and as incompetent and a conclusion.

Mr. Hogsett: And for the further reason, may I add, that it is wholly improper in arriving at a construction of a law which has been duly enacted to inquire into the negotiations which led to the passage of the law. All of those things are deemed to have been and are conclusively presumed to have been merged in the law as enacted, and it is for the court to construe the law as it finds it, wholly uninfluenced by the negotiations between the contending parties which led to the passage of that law.

The Referee: Overruled.

Mr. Hogsett: Exception.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

[fol. 2982] Mr. Barker:

Q. After the passage of the Rating Act in 1915, and up to the time that you left the department in August, 1917——

A. That is correct.

Q. —had you prepared and submitted to the companies a blank report for them to make as to their underwriting experience by classes in Missouri?

A. Well, now, with reference to the time that that report was actually submitted to the companies I don't recall, General Barker, whether it was done prior to my leaving the department or not. I know that immediately following the passage of the act and in anticipation of its effectiveness that we went to work on these reports. Just when they were completed or just when they were sent out I can't remember, I can't be sure as to those dates, as to whether it was prior—my recollection is that those blanks were completed, in fact I am sure that the form that was adopted that year was completed under my instructions

and before my leaving the department. Now, whether they were ever submitted to the companies or mailed out I wouldn't say.

Q. Now, up to the time you left the department was there any report, regular report, submitted to the department by the fire stock companies doing business in Missouri as to their Missouri business on any basis other than the premium received or premium written basis?

A. None whatever that I know of. That is, on the Missouri business.

Q. I am speaking of the Missouri business.

A. Of course, the annual statement includes a statement of their entire business throughout the country.

[fol. 2983] Q. And that is reported in the annual statement as the statement shows and the testimony shows on the earned premium basis?

A. That is correct.

Q. Now, in that statement, in the annual statement, there is a statement as to the Missouri business?

A. Yes.

Q. And that is on what basis, and was when you were there?

A. Premiums received.

Mr. Barker: I believe that is all.

Cross-examination by Mr. Folonie:

Q. When the companies left the State of Missouri there was a prosecution of the companies being conducted in the courts at the time, was there not?

A. I don't believe that that prosecution was being conducted at the time they left the state. I think that was instituted after they left, and I think, my recollection is, that the basis of the prosecution was the fact that they had withdrawn.

Q. Who was the attorney general at the time?

A. General Barker.

Q. He is the one that made all the trouble at that time and is still making it now?

A. That involves entirely too much. I heard so many things at the time, of course, that it was my feeling after going in and finding the companies withdrawing, I felt at

that time the companies were making the trouble. That involved so many elements that I wouldn't undertake to place the responsibility for that situation.

[fol. 2984] Q. You are not willing to put it on the General entirely?

A. No, because I recall that the insurance press at that time was placing it upon me and referring to me very kindly as the representative of the progenitor of the outlawry of the Jesse James days, so I assume that they really attached a little blame to me.

Q. You were criticised in the public press, were you?

A. Yes, the governor of the state and everybody; and we were criticising the companies. In fact, it was quite an ugly little fight.

Q. And who was governor at that time?

A. Governor Major.

Q. Well, do I understand you, then, that your relations with the companies were not of the pleasantest type just at that time?

A. I would say that up to that time. I don't think that I had ever met a representative of an insurance company. After they had withdrawn and after our situation became rather acute in the whole state we were all making an effort, of course, to adjust it; I believe I then for the first time, perhaps forty or fifty days after their withdrawal, met representatives of the companies. We began trying to work out some satisfactory solution of it. I would say that during that first thirty or forty days that the relations between my department, and every other department in Missouri, and the fire companies, was decidedly strained; but that after that period when we began to try to work out a more satisfactory solution, that I at least thought and got the impression that our relations became very friendly.

[fol. 2985] Q. And if Mr. Hyde had not entered this order we would still be getting along friendly, wouldn't we?

A. I can't answer that question, sir. I can't answer that question.

Mr. Folonie: All right. That is all with this witness.

The Witness (continuing): Because I am not in touch with this situation.

Redirect examination by Mr. Barker:

Q. Judge Revelle, after these differences were adjusted and the rating act was passed, you were employed by the fire stock insurance companies in Missouri as one of their attorneys and tried for them the case of State ex rel. v. Hardy, reported in the 278th Missouri at page 685, commonly called the Surcharge case, in 1918-19, did you not?

Mr. Folonie: We object to attempting to give character to the witness by showing his relations with the plaintiffs herein.

Mr. Barker: In view of the fact that Mr. Folonie has attempted to show that his feelings were unfriendly, I want to show, to the contrary, that he was very friendly and that he was their attorney afterwards.

The Referee: I think that objection will be personel to the witness. Overruled.

(To which action and ruling of the referee plaintiffs by counsel then and there at the time duly excepted and still except.)

[fol. 2986] The Witness: I think the court records will disclose that I was one of the attorneys in that case, yes.

Mr. Barker:

Q. Judge, I call your attention to defendant's Exhibit No. 2035, and ask you—for identification—and ask you if that is the record, the abstract of the record as filed in the Supreme Court in the case of State ex rel. vs. Hardy and reported in the 278th Missouri at page 685, and in which you were one of the attorneys for the insurance companies, and commonly known as the Surcharge case?

A. Well, of course I haven't gone through that, and if I went through it I wouldn't distinctly recall the entire thing. I would say that that has the general appearance of, and general condition, of being the record in that case, and it is my judgment that it is.

Mr. Barker: Now, in view of Mr. Folonie's objection to a part of the record, I wish to state that I find that it will be impossible to segregate the different items on the written premium basis, as they are all contained throughout the

entire volume, and again I offer as a whole Defendant's Sxhibit No. 2035.

Mr. Folonie: We renew our objections previously made.

The Referee: Overruled.

Mr. Folonie: Exception.

(To which action and ruling of the referee, plaintiffs by counsel then and there at the time duly excepted and still except.)

[fol. 2987] (Clerk will copy.)

The Referee: This exhibit will be taken and considered as part of the record in this cause with the same force and effect as if copied at length herein, without being so copied.

(Which said document, having been marked Defendant's Exhibit 2035, being so offered and introduced was admitted in evidence, and same is made part of this record by reference rather than by incorporation herein, and accompanies certain other voluminous exhibits so made a part of this record.) (Clerk will copy.)

Said Exhibit No. 2035 is as follows:

[fol. 2988] DEFENDANT'S EXHIBIT No. 2035

IN THE SUPREME COURT OF MISSOURI, EN BANC, APRIL TERM, 1919

No. 21377

STATE OF MISSOURI at the Relation of JAMES A. WATERWORTH and HAROLD M. HESS, Respondents,

v.

A. L. HARTY, Superintendent of the Insurance Department of the State of Missouri, Appellant

Appeal from the Circuit Court of Cole County

(Honorable John G. Slate, Judge)

Abstract of Record

This action was instituted in the Circuit Court of Cole county, Missouri, by the attorneys in fact of the stock fire

insurance companies doing business in Missouri, for the purpose of compelling the Superintendent of Insurance to increase all insurance rates now charged by said companies [fol. 2989] in the State of Missouri, by adding a flat ten per cent increase thereto.

The original petition was filed June 18, 1918, (Rec. U. p. 176) and on the 23rd day of June, 1918, an amended petition was filed (Rec. U. p. 204), which is in words and figures as follows:

AMENDED PETITION—Filed June 23, 1918

[Caption omitted]

Relator states that the respondent, A. L. Harty, is the duly appointed, acting and qualified superintendent of the Insurance Department of the State of Missouri and that James A. Waterworth and Harold M. Hess are the attorneys-in-fact for the following insurance companies doing a fire insurance business in the State of Missouri, to-wit:

American Eagle Fire Insurance Company, a corporation organized under the laws of the State of New York, with its principal place of business at New York City, New York.

American Druggists' Fire Insurance Company, a corporation organized under the laws of the State of Ohio, with its principal place of business at Cincinnati, Ohio.

American Central Insurance Company, a corporation organized under the laws of the State of Missouri, with its principal place of business at St. Louis, Missouri.

American Alliance Insurance Company, a corporation organized under the laws of the State of Pennsylvania, with its principal place of business at Philadelphia, Pennsylvania.

Alliance Insurance Company, a corporation organized under the laws of the State of Pennsylvania, with its prin- [fol. 2990] cipal place of business at Philadelphia, Pa.

Agricultural Insurance Company, a corporation organized under the laws of the State of New York, with its principal place of business at Watertown, N. Y.

Aetna Insurance Company, a corporation organized under the laws of the State of Connecticut, with its principal place of business at Hartford, Conn.

Colonial Assurance Company, a corporation organized under the laws of the State of New York, with its principal place of business at New York City, N. Y.

Cleveland National Fire Insurance Company, a corporation organized under the laws of the State of Ohio, with its principal place of business at Cleveland, Ohio.

City of New York Insurance Company, a corporation organized under the laws of the State of New York, with its principal place of business at New York City, N. Y.

Citizens' Insurance Company, a corporation organized under the laws of the State of Missouri, with its principal place of business at St. Louis, Mo.

Camden Fire Insurance Association, a corporation organized under the laws of the State of New Jersey, with its principal place of business at Camden, N. J.

Buffalo Insurance Company, a corporation organized under the laws of the State of New York, with its principal place of business at New York City, N. Y.

Boston Insurance Company, a corporation organized under the laws of the State of Massachusetts, with its principal place of business at Boston, Mass.

Automobile Insurance Company, a corporation organized under the laws of the state of Connecticut, with its principal place of business at Hartford, Conn.

[fol. 2291] Assurance Company of America, a corporation organized under the laws of the State of New York, with its principal place of business at New York City, N. Y.

American Insurance Company, a corporation organized under the laws of the State of New Jersey, with its principal place of business at Newark, N. J.

Fire Association of Philadelphia, a corporation organized under the laws of the State of Pennsylvania, with its principal place of business at Philadelphia, Pa.

Fidelity-Phenix Fire Insurance Company, a corporation organized under the laws of the State of New York, with its principal place of business at New York City, N. Y.

Farmers Fire Insurance Company, a corporation organized under the laws of the State of Pennsylvania, with its principal place of business at York, Pa.

Equity Fire Insurance Company, a corporation organized under the laws of the State of Missouri, with its principal place of business at Kansas City, Mo.

Equitable Fire and Marine Insurance Company, a corporation organized under the laws of the State of Rhode Island, with its principal place of business at Providence, R. I.

Dubuque Fire and Marine Insurance Company, a corporation organized under the laws of the State of Iowa, with its principal place of business at Dubuque, Iowa.

Detroit Fire and Marine Insurance Company, a corporation organized under the laws of the State of Michigan, with its principal place of business at Detroit, Mich.

County Fire Insurance Company, a corporation organized
[fol. 2992] under the laws of the State of Pennsylvania, with its principal place of business at Philadelphia, Pa.

Continental Insurance Company, a corporation organized under the laws of the State of New York, with its principal place of business at New York City, N. Y.

Concordia Fire Insurance Company, a corporation organized under the laws of the State of Wisconsin, with its principal place of business at Milwaukee, Wis.

Connecticut Fire Insurance Company, a corporation organized under the laws of the State of Connecticut, with its principal place of business at Hartford, Conn.

Commonwealth Insurance Company, a corporation organized under the laws of the State of New York, with its principal place of business at New York City, N. Y.

Commercial Fire Insurance Company, a corporation organized under the laws of the State of New York, with its principal place of business at New York City, N. Y.

Imperial Assurance Company, a corporation organized under the laws of the State of New York, with its principal place of business at New York City, N. Y.

Home Fire and Marine Insurance Company, a corporation organized under the laws of the State of California, with its principal place of business at San Francisco, Cal.

The Home Insurance Company, a corporation organized under the laws of the State of New York, with its principal place of business at New York City, N. Y.

Hartford Fire Insurance Company, a corporation organ-
[fol. 2993] ized under the laws of the State of Connecticut, with its principal place of business at Hartford, Conn.

Hanover Fire Insurance Company, a corporation organized under the laws of the State of New York, with its principal place of business at New York City, N. Y.

Gerat American Insurance Company, a corporation organized under the laws of the State of New York, with its principal place of business at New York City, N. Y.

Granite State Fire Insurance Company, a corporation organized under the laws of the State of New Hampshire, with its principal place of business at Portsmouth, N. H.

Globe and Rutgers Fire Insurance Company, a corporation organized under the laws of the State of New York, with its principal place of business at New York City, N. Y.

Glens Falls Insurance Company, a corporation organized under the laws of the State of New York, with its principal place of business at Glens Falls, N. Y.

Girard Fire and Marine Insurance Company, a corporation organized under the laws of the State of Pennsylvania, with its principal place of business at Philadelphia, Pa.

Franklin Fire Insurance Company, a corporation organized under the laws of the State of Pennsylvania, with its principal place of business at Philadelphia, Pa.

Fitchburg Mutual Fire Insurance Company, a corporation organized under the laws of the State of Massachusetts, with its principal place of business at Fitchburg, Mass.

Firemen's Insurance Company, a corporation organized [fol. 2994] under the laws of the State of New Jersey, with its principal place of business at Newark, N. J.

Firemen's Fund Insurance Company, a corporation organized under the laws of the State of California, with its principal place of business at San Francisco, Cal.

Mechanics Insurance Company, a corporation organized under the laws of the State of Pennsylvania, with its principal place of business at Philadelphia, Pa.

Massachusetts Fire and Marine Insurance Company, a corporation organized under the laws of the State of Massachusetts, with its principal place of business at Boston, Mass.

Marquette National Fire Insurance Company, a corporation organized under the laws of the State of New York, with its principal place of business at New York City, N. Y.

Liverpool & London & Globe Insurance Company, a corporation organized under the laws of the State of New York, with its principal place of business at New York City, N. Y.

Jefferson Mutual Fire Insurance Company, a corporation organized under the laws of the State of Missouri, with its principal place of business at St. Louis, Mo.

Iowa State Fire Insurance Company, a corporation organized under the laws of the State of Iowa, with its principal place of business at Keokuk, Iowa.

Insurance Company of the State of Pennsylvania, a corporation organized under the laws of the State of Pennsylvania, with its principal place of business at Philadelphia, Pa.

Insurance Company of North America, a corporation organized under the laws of the State of Pennsylvania, with [fol. 2995] its principal place of business at Philadelphia, Pa.

National Union Fire Insurance Company, a corporation organized under the laws of the State of Pennsylvania, with its principal place of business at Pittsburgh, Pa.

National Trades' Fire Insurance Company, a corporation organized under the laws of the State of Illinois, with its principal place of business at Chicago, Ill.

National Liberty Insurance Company, a corporation organized under the laws of the State of New York, with its principal place of business at New York City, N. Y.

National Fire Insurance Company, a corporation organized under the laws of the State of Connecticut, with its principal place of business at Hartford, Conn.

National Ben Franklin Insurance Company, a corporation organized under the laws of the State of Pennsylvania, with its principal place of business at Pittsburgh, Pa.

Mutual Fire Insurance Company, a corporation organized under the laws of the State of Missouri, with its principal place of business at St. Charles, Mo.

Minnesota Implement Mutual Fire Insurance Co., a corporation organized under the laws of the State of Minnesota, with its principal place of business at Owatonna, Minn.

Minneapolis Fire and Marine Insurance Company, a corporation organized under the laws of the State of Minnesota, with its principal place of business at Minneapolis, Minn.

Milwaukee Mechanics' Insurance Company, a corpora- [fol. 2996] tion organized under the laws of the State of Wisconsin, with its principal place of business at Milwaukee, Wis.

Mill Owners Mutual Fire Insurance Company, a corporation organized under the laws of the State of Iowa, with its principal place of business at Des Moines, Iowa.

Michigan Fire and Marine Insurance Company, a corporation organized under the laws of the State of Michigan, with its principal place of business at Detroit, Mich.

Michigan Commercial Insurance Company, a corporation organized under the laws of the State of Michigan, with its principal place of business at Lansing, Mich.

Merchants Fire Assurance Corporation, a corporation organized under the laws of the State of New York, with its principal place of business at New York City, N. Y.

Mercantile Insurance Company of America, a corporation organized under the laws of the State of New York, with its principal place of business at New York City, N. Y.

Mechanics and Traders Insurance Company, a corporation organized under the laws of the State of Louisiana, with its principal place of business at New Orleans, La.

Ohio Farmer's Fire Insurance Company, a corporation organized under the laws of the State of Ohio, with its principal place of business at LeRoy, Ohio.

Northwestern National Insurance Company, a corporation organized under the laws of the State of Wisconsin, with its principal place of business at Milwaukee, Wis.

North River Insurance Company, a corporation organized [fol. 2697] under the laws of the State of New York, with its principal place of business at New York City, N. Y.

Northern Insurance Company, a corporation organized under the laws of the State of New York, with its principal place of business at New York City, N. Y.

Niagara Fire Insurance Company, a corporation organized under the laws of the State of New York, with its principal place of business at New York City, N. Y.

New Jersey Insurance Company, a corporation organized under the laws of the State of New Jersey, with its principal place of business at Newark, N. J.

New Hampshire Fire Insurance Company, a corporation organized under the laws of the State of New Hampshire, with its principal place of business at Manchester, N. H.

New Brunswick Fire Insurance Company, a corporation organized under the laws of the State of New Jersey, with its principal place of business at New Brunswick, N. J.

Newark Fire Insurance Company, a corporation organized under the laws of the State of New Jersey, with its principal place of business at Newark, N. J.

Retail Hardware Mutual Insurance Company, a corporation organized under the laws of Minnesota, with its principal place of business at Minneapolis, Minn.

Reliance Insurance Company, a corporation organized under the laws of the State of Pennsylvania, with its principal place of business at Philadelphia, Pa.

Queen Insurance Company of America, a corporation organized under the laws of the State of New York, with [fol. 2998] its principal place of business at New York City, N. Y.

Providence-Washington Insurance Company, a corporation organized under the laws of the State of Rhode Island, with its principal place of business at Providence, R. I.

Phoenix Insurance Company, a corporation organized under the laws of the State of Connecticut, with its principal place of business at Hartford, Conn.

Pennsylvania Fire Insurance Company, a corporation organized under the laws of Pennsylvania, with its principal place of business at Philadelphia, Pa.

Pacific Fire Insurance Company, a corporation organized under the laws of the State of New York, with its principal place of business at New York City, N. Y.

Orient Insurance Company, a corporation organized under the laws of the State of Connecticut, with its principal place of business at Hartford, Conn.

Old Colony Insurance Company, a corporation organized under the laws of the State of Massachusetts, with its principal place of business at Boston, Mass.

Ohio Millers Mutual Fire Insurance Company, a corporation organized under the laws of the State of Ohio, with its principal place of business at Canton, Ohio.

Standard Fire Insurance Company, a corporation organized under the laws of the State of Connecticut, with its principal place of business at Hartford, Conn.

Springfield Fire and Marine Insurance Company, a corporation organized under the laws of the State of Massachusetts, with its principal place of business at Springfield, Mass.

Security Insurance Company, a corporation organized [fol. 2999] under the laws of the State of Connecticut, with its principal place of business at New Haven, Conn.

Safeguard Insurance Company, a corporation organized under the laws of the State of New York, with its principal place of business at New York City, N. Y.

St. Paul Fire and Marine Insurance Company, a corporation organized under the laws of the State of Minnesota, with its principal place of business at St. Paul, Minn.

Rhode Island Fire Insurance Company, a corporation organized under the laws of the State of Rhode Island, with its principal place of business at Providence, R. I.

Westchester Fire Insurance Company, a corporation organized under the laws of the State of New York, with its principal place of business at New York City, N. Y.

Washington Mutual Fire Insurance Company, a corporation organized under the laws of the State of Missouri, with its principal place of business at St. Louis, Mo.

United States Fire Insurance Company, a corporation organized under the laws of the State of New York, with its principal place of business at New York City, N. Y.

Underwriters at Great Western Lloyds, a corporation organized under the laws of the State of New York, with its principal place of business at New York City, N. Y.

Underwriters at American Lloyds, a corporation organized under the laws of the State of New York, with its principal place of business at New York City, N. Y.

Stuyvesant Insurance Company, a corporation organized [fol. 3000] under the laws of the State of New York, with its principal place of business at New York City, N. Y.

Sterling Fire Insurance Company, a corporation organized under the laws of the State of Indiana, with its principal place of business at Indianapolis, Ind.

Commercial Union Assurance Company, Ltd., a corporation organized under the laws of England, with its principal United States office at New York City, N. Y.

Century Insurance Company, Ltd., a corporation organized under the Laws of Scotland, with its principal United States office at New York City, N. Y.

Caledonian Insurance Company, a corporation organized under the laws of Scotland, with its principal United States office at New York City, N. Y.

British American Assurance Company, a corporation organized under the laws of Canada, with its principal place of business at Toronto, Canada.

Atlas Assurance Company, Ltd., a corporation organized under the laws of England, with its principal United States office at New York City, N. Y.

Eagle and British Dominion Insurance Company a corporation organized under the laws of England, with its principal United States office at New York City, N. Y.

General Fire Assurance Company, a corporation organized under the laws of France, with its principal United States office at New York City, N. Y.

London and Lancashire Fire Insurance Company, Ltd., a corporation organized under the laws of England, with its principal United States office at New York City, N. Y.

London and Lancashire Life and General Assurance As-
[fol. 3001] sociation, Ltd., a corporation organized under the laws of England, with its principal United States office at New York City, N. Y.

London Assurance Corporation, a corporation organized under the laws of England, with its principal United States office at New York City, N. Y.

Liverpool & London & Globe Insurance Company, Ltd., a corporation organized under the laws of England, with its principal United States office at New York City, N. Y.

Norwich Union Fire Insurance Society, Ltd., a corporation organized under the laws of England, with its principal United States office at New York City, N. Y.

Northern Assurance Company, Ltd., a corporation organized under the laws of England, with its principal United States office at New York City, N. Y.

North British and Mercantile Insurance Company, a corporation organized under the laws of England, with its principal United States office at New York City, N. Y.

Netherlands Fire and Life Insurance Company, a corporation organized under the laws of Holland, with its principal United States office at Chicago, Ill.

National Fire Insurance Company, a corporation organized under the laws of France, with its principal United States office at Providence, R. I.

Phenix Assurance Company, Ltd., a corporation organized under the laws of England, with its principal United States office at New York City, N. Y.

Phenix Fire Insurance Company, a corporation organized under the laws of France, with its principal United States office at Providence, R. I.

Patriotic Assurance Company, Ltd., a corporation organ-
[fol. 3002] ized under the laws of Ireland, with its principal United States office at New York City, N. Y.

Palatine Insurance Company, a corporation organized under the laws of England, with its principal United States office at New York City, N. Y.

State Fire Insurance Company, a corporation organized under the laws of England, with its principal United States office at Hartford, Conn.

Scottish Union and National Insurance Company, a corporation organized under the laws of Scotland, with its principal United States office at Hartford, Conn.

Royal Insurance Company, Ltd., a corporation organized under the laws of England, with its principal United States office at Chicago, Illinois.

Royal Exchange Assurance Corporation, a corporation organized under the laws of England, with its principal United States office at New York City, N. Y.

Yorkshire Insurance Company, Ltd., a corporation organized under the laws of England, with its principal United States office at New York City, N. Y.

Western Assurance Company, a corporation organized under the laws of Canada, with its principal place of business at Toronto, Canada.

Urbine Fire Insurance Company, Ltd., a corporation organized under the laws of France, with its principal United States office at New York City, N. Y.

Union Fire Insurance Company, a corporation organized under the laws of France, with its principal United States office at Providence, R. I.

Union Assurance Society, Ltd., a corporation organized under the laws of England, with its principal United States office at New York City, N. Y.

Svea Fire & Life Insurance Company, a corporation or-
[fol. 3003] ganized under the laws of Sweden, with its principal United States office at New York City, N. Y.

Sun Insurance Office, a corporation organized under the laws of England, with its principal United States office at New York City, N. Y.,

And as such legally represented said insurance companies in the matter of making, recording, filing and promulgating the rates charged by said companies in the State of Missouri for fire insurance and as such attorneys-in-fact are authorized to and do make, file and maintain all public records of said insurance companies in relation to their rates and charges for insurance and are authorized by said fire insurance companies and by an act of the legislature of the State of Missouri entitled "An act to regulate insurance against loss or damage by fire, lightning, hail, wind storm and sprinkler leakage and the rates of premium thereon, and to provide for the making and maintenance of public records in relation thereto," to make, publish and file with the Insurance Department of the State of Missouri the rates and charges and the schedule of rates charged and to be charged by said fire insurance companies doing business in the State of Missouri and that each of said insurance companies is legally authorized to transact business in the State of Missouri as a fire insurance company.

Relator further states that as such attorney-in-fact and acting for and in behalf of all the said fire insurance companies doing business in the State of Missouri, said James A. Waterworth and said Harold M. Hess, on the 27th day of March, 1918, filed with the Superintendent of the Insurance Department of the State of Missouri certain rates and schedule of rates by which they proposed to increase for the companies represented by them all fire insurance [fol. 3004] rates in the State of Missouri to the extent of ten per cent thereof over and above the rates then and now charged and permitted to be charged by the insurance companies in the State of Missouri and applied for and requested the approval of the Superintendent of the Insurance Department of such increase in rates and applied for and requested the authorization and permission of the Superintendent of the Insurance Department to make such rates and schedule of rates and such increase in rates effective from and after ten days after the filing of said proposed schedule and said proposed increase of rates.

Relator further says that thereafter the respondent, said Superintendent of the Insurance Department, designated a time and place at which he would hear, consider and determine the matter of permitting said proposed rates and said proposed increase of rates to become effective in the State of Missouri and at the time and place so designated said James A. Waterworth and said Harold M. Hess, acting for and in behalf of all the said fire insurance companies doing business in the State of Missouri, duly appeared and submitted to said respondent facts and proof establishing the facts which warranted and made necessary said increase in the fire insurance rates in the State of Missouri and that it thereupon became and was the duty of the said Superintendent of the Insurance Department to permit said increase in rates to become effective and operative in the State of Missouri, but notwithstanding the premises, said Superintendent of the Insurance Department made an order and finding rejecting said filing and refused to permit said rates and said increase in rates to become effective and operative in the State of Missouri, and Respondent says that said Superintendent of the In- [fol. 3005] surance Department still refuses to permit or to authorize said proposed rates and said proposed increase in rates to become effective in the State of Missouri and refuses to permit said rates to be published or collected in the State of Missouri by the insurance companies represented by said James A. Waterworth and said Harold M. Hess.

Relator further says and offers to show by competent and proper proof that during the period of five years next prior to the filing of said schedule of rates and said proposed increase in rates, the rates collected and permitted to be collected during that period of said five years were wholly insufficient and inadequate to produce such a premium income as would enable the fire insurance companies doing business in the State of Missouri to pay their legitimate losses and necessary operating expenses and to discharge their lawful obligations in the State of Missouri and that the said proposed increase of ten per cent in the rates now charged and permitted to be charged is necessary and essential for such purposes.

Relator further says that the rates which the said fire insurance companies are now permitted to charge in the

State of Missouri are wholly insufficient and will be insufficient to enable the said fire insurance companies doing business in the State of Missouri to pay their legitimate losses and necessary operating expenses during the year 1918 and the years next following and that unless said proposed increase of ten per cent is permitted and authorized and said companies are allowed to collect said increased rates, each and all of the said fire insurance companies doing business in the State of Missouri will be compelled to operate at a great financial loss or will be compelled to cease and discontinue business, transactions and operations [fol. 3006] in the State of Missouri.

Relator further says that since the beginning of the war in which our country is now engaged, the fire losses for which the said insurance companies are liable have materially and greatly increased and that the necessary cost of transacting and carrying on said business has likewise materially and greatly increased and that unless the proposed increase of ten per cent in the fire insurance rates is authorized and permitted, the fire insurance companies transacting business in the State of Missouri will suffer great financial loss during the existence and continuation of the war and that said loss will amount in the aggregate to several millions of dollars.

Relator further states that approximately eighty per cent of the fire insurance losses in the State of Missouri are partial losses and that in each and all of said losses the cost of replacement is the measure of the insurer's liability and that this cost of replacement has since the beginning of the war increased to such an extent that this increase alone represents approximately twenty per cent of the premium income received by insurers on risks in the State of Missouri under present and existing rates and charges; that the taxes, federal, state and municipal, which the insurers are required to pay, have increased since the beginning of the war to such an extent that this increase represents about six per cent of the premium income received by insurance companies on risks in the State of Missouri on the rates and charges which they are now permitted to receive and collect and that the other necessary and legitimate expenses of the insurance companies have increased proportionately and that the rates of premium which the

[fol. 3007] insurance companies are now permitted to charge under the order and ruling of the Superintendent of the Insurance Department will not produce sufficient income to pay the necessary expenses and legitimate losses of the insurance companies and will not enable such insurance companies to discharge their lawful obligations and that said proposed increase of ten per cent in the rates now charged and permitted to be charged is necessary and essential in order to enable said insurance companies to meet and discharge their obligations and necessary expenses.

Relator further says that during the period of ten years next preceding the filing of said rates and schedule of rates and said proposed increase in rates, the average premium returns received by the fire insurance companies on their transactions in the State of Missouri have been wholly insufficient and inadequate to pay the legitimate losses and necessary expenses of the fire insurance companies on their business transactions in the State of Missouri and that by reason thereof said insurance companies doing business in the State of Missouri have suffered a financial loss to the extent of many millions of dollars and that the rates which said companies are now permitted to charge are substantially and materially the same rates and charges which they have collected and been permitted to collect during said period of ten years and that the rates and charges which said insurance companies are now permitted to charge in the State of Missouri under the orders and findings of the respondent are wholly insufficient and will be wholly insufficent to produce a sufficient premium income to enable said fire insurance companies to pay their legitimate losses and discharge their lawful obligations and defray their necessary expenses on business done in the State [fol. 3008] of Missouri and that the rates now charged and permitted to be charged are confiscatory and result in the taking of the property of the insurance companies without due process of law.

Relator further says that upon the making and filing of the order and finding of the Superintendent of the Insurance Department denying to the said insurance companies and their representatives the right and authority to charge and collect the said proposed increase of rates, the said

James A. Waterworth and Harold M. Hess duly filed with said respondent a motion asking and praying that said order and finding of respondent be set aside and for naught held and that said increase in rates be authorized and permitted and that in said motion said James A. Waterworth and said Harold M. Hess offered to prove to the complete satisfaction of said Superintendent of the Insurance Department that said proposed increase in rates was necessary and warranted in order to enable the insurance companies to collect a sufficient premium income to enable them to meet their obligations and defray their necessary expenses, but that said respondent overruled said motion and refused and still refuses to authorize or permit the use or publication of said proposed charge and increase in rates.

Wherefore, relator prays that in accordance with the of the State of Missouri regulating fire insurance rates, this honorable court make an order requiring the respondent to certify to this court within five days from date hereof all books, papers and files relating to or filed in connection with said filing of increased rate and application for approval thereof, together with a copy of his order and finding relating to said proposed increase in rates and that this honorable court proceed at once to judicially review de novo [fol. 3009] and in all things the said ruling and finding of respondent and that this honorable court hear the evidence and determine the fact as to the truthfulness of the allegations herein contained and that upon a final hearing this court order and direct said Superintendent of the Insurance Department to permit said James A. Waterworth and said Harold M. Hess to file and publish said proposed rates and schedule or rates and said proposed increase in rates and that they and the companies which they represent be authorized and permitted to collect in the State of Missouri said increased rates and for such other and further relief as to the court may seem just.

John S. Leahy, Chas. G. Revelle, Attorneys for Relator.

On June 23, 1918, answer was filed in said cause (Rec. U. p. 205), in words and figures as follows:

ANSWER—Filed June 23, 1918

[Caption omitted]

Comes now the respondent, and admits that he is the duly appointed, acting and qualified Superintendent of the Insurance Department of the State of Missouri; that relators, on or about the 27th day of March, 1918, filed in said Insurance Deparement certain rates and schedule of rates by which they proposed to increase all fire insurance rates in the State of Missouri to the extent of ten per cent thereof over and above the rates then in force; that relators filed certain affidavits with respondent in support of their application to increase said rates as aforesaid; that respondent refused, and still refuses, to approve said rates and [fol. 3010] schedule of rates so submitted by relators for approval; that after this respondent had refused to approve said rates and schedule of rates, relators filed a motion to reopen the whole matter, and offered to submit further proof, but that respondent overruled said motion and refused, and still refuses, to approve said rates and schedule of rates filed as aforesaid; but respondent denies that during the period of five years next prior to the filing of said schedule of rates and said proposed increase in rates, the rates collected and permitted to be collected during that period of said five years were wholly insufficient and inadequate to produce such a premium income as would enable the fire insurance companies doing business in the State of Missouri to pay their legitimate losses and necessary operating expenses and to discharge their lawful obligations in the State of Missouri, and that the said proposed increase of ten per cent in the rates now charged and permitted to be charged is necessary and essential for such purposes; and denies that the rates which the said fire insurance companies are now permitted to charge in the State of Missouri are wholly insufficient and will be insufficient to enable the said fire insurance companies doing business in the State of Missouri to pay their legitimate losses and necessary operating expenses during the year 1918, and

the years next following, and that unless said proposed increase of ten per cent is permitted and authorized and said companies are allowed to collect said increased rates, each and all of the said fire insurance companies doing business in the State of Missouri will be compelled to operate at a great financial loss or will be compelled to cease and discontinue business transactions and operations in the State of Missouri; and denies that the necessary cost of transacting and carrying on the insurance has materially and [fol. 3011] greatly increased to such an extent that unless relators are allowed said proposed increase of ten per cent, the fire insurance companies transacting business in this State will suffer great financial loss during the existence and continuation of the war, or that said loss will amount, in the aggregate, to several millions of dollars; and denies that the rates of premium which the insurance companies are now permitted to charge under the order and ruling of the Superintendent of the Insurance Department will not produce sufficient income to pay the necessary expenses and legitimate losses of the insurance companies and will not enable such insurance companies to discharge their lawful obligations, and that said proposed increase of ten per cent in the rates now charged and permitted to be charged is necessary and essential in order to enable said insurance companies to meet and discharge their obligations and necessary expenses; and denies that the rates and charges which said insurance companies are now permitted to charge in the State of Missouri under the orders and findings of the respondent are wholly insufficient and will be wholly insufficient to produce a sufficient premium income to enable said fire insurance companies to pay their legitimate losses and discharge their lawful obligations and defray their necessary expenses on business done in the State of Missouri, and that the rates now charged and permitted to be charged are confiscatory and result in the taking of the property of the insurance companies without due process of law; and denies each and every other allegation in said petition contained, not specifically admitted.

Further answering, respondent says that this court has no jurisdiction, authority or power to entertain this pro- [fol. 3012] ceeding, because it is an effort on the part of relators to have the insurance rates of this State fixed by

the court; that this Court has no power to fix such rates, and any attempt to do so will be an usurpation of legislative and executive powers and functions, and in direct contravention of Article III of the Constitution of Missouri.

Further answering, respondent says that the action of this respondent in approving or disapproving rates and schedules of rates filed by insurance companies, for increase of rates over those now in existence, is a discretionary power given to this respondent by the Legislature, and is not subject to the control of this court.

Further answering, this respondent says that this court has no authority, jurisdiction or power through and in a new and independent hearing by this court to control the action of this respondent in the matter of his refusal to approve an increase of insurance rate where, as in this case, such refusal was made after evidence was submitted to him and in view of which his action was taken.

Further answering, respondent says that the acceptance of and acquiescence in by said insurance companies, of this respondent's approval or rejection of the proposed rates and schedule of rates so submitted by relators, is a condition upon which said insurance companies do business in this State, and such condition, fixed by the General Assembly of this State, cannot be annul-ed by the courts of this State by the substitution of a court determination in a new and independent investigation, by this Court, of such rates.

Further answering, respondent says that he has no power to grant an increase in insurance rates now in force in this [fol. 3013] State, by adding a flat ten per cent raise to all such rates, but can approve such increase in rates only upon a showing made and based upon differences and requirements of the different classes and risks, and in the manner contemplated by law; that there is no authority, jurisdiction or power in this respondent, or in this court, to increase such rates by adding a flat ten per cent increase to all insurance rates now in force.

Further answering, respondent says that within the last year the Insurance department has approved certain increase in rates of fire insurance in this State, and that sufficient time has not elapsed to authorize the granting or approval of further or additional increase of rates in this State.

Further answering, respondent says that the action of relators is an attempt to control the action of this respondent in a particular manner, and to introduce a new and independent hearing by this court for the purpose of this court, by mandamus, compelling this respondent to do a certain thing in a certain manner.

Further answering, respondent says that this action on the part of relators is an endeavor to have the insurance rates of this State fixed by the court of this State, in direct violation of Article III of the Constitution of Missouri.

Wherefore, having fully answered, respondent asks to be discharged with his costs.

Frank W. McAllister, Attorney-General. John T. Gose, Assistant Attorney-General.

[fol. 3014] On June 30, 1918, a reference was ordered, and Honorable Roy D. Williams was appointed referee (Rec. U. p. 209).

On August 21, 1918, oath of referee filed (Vacation Rec. p. 382).

Thereafter, on January 6, 1919, and during the regular November term, 1918, of said court, the referee filed his report (Rec. U. p. 260), which said report is set out in full in the bill of exceptions herein, to which express reference is hereby made and the same called for as a part hereof.

Thereafter, and during said regular November term, 1918, of said court, and within four days after the filing of said report of said referee, to-wit: On January 9, 1919, respondent filed his exceptions to said report of said referee (Rec. U. p. 260), which said exceptions to said report of said referee are set out in full in the bill of exceptions herein, to which express reference is hereby made and the same called for as a part hereof.

Thereafter, on January 10, 1919, and during said term, said exceptions, so filed, were argued and submitted and taken under advisement by the court until Monday, January 20, 1919 (Rec. U. p. 261).

Thereafter, on January 20, 1919, and during said November term, 1918, said exceptions to said report of said referee were by the court overruled, and report of said referee approved, respondent at the time thereof objecting and excepting and saving his exceptions (Rec. U. p. 280).

Thereafter, on said January 20, 1919, and during said November term, 1918, of said court, final judgment was by the court given and entered (Rec. U. pp. 280, 281), in words and figures as follows:

[fol. 3015] JUDGMENT—Entered January 20, 1919

[Caption omitted]

Now on this day, this cause coming on be be heard on the exceptions filed by respondent to the report of Honorable Roy D. Williams, to whom said cause was heretofore referred by this court, by stipulation of the parties, having filed in this court his report and findings of law and fact, together with the oath of said referee and said stipulation of the parties, and it further appearing to the court that all of the parties hereto are in court and represented by their counsel, the relators by Messrs. Charles G. Revelle and John S. Leahy, and the respondent by Honorable Frank W. McAllister, Attorney-General, and Honorable John T. Gose, Assistant Attorney-General, and the court on the 10th and 11th days of January, 1919, having heard arguments by counsel for both relators and respondent on the exceptions filed by respondent to the report of said Honorable Roy D. Williams, referee as aforesaid, and it further appearing to the court that the said referee upon the evidence adduced before him and the arguments of counsel, has submitted to this court his conclusions thereon, as follows:

"Taking the calculations and applying them as most favorable to the respondent, and including the estimated increase in premium income by reason of the advance in rates granted in October, 1917, and deducting those items which the uncontradicted evidence shows are essential, and applying these figures to the 1917 business, this result is reached:

[fol. 3016] Missouri capital for 1917	$2,687,381
Missouri capital and surplus	7,918,940
Missouri premiums for 1917	11,599,192
Added estimated increase	537,522
	$12,136,714
Add interest on unearned premiums and on capital and surplus for Missouri	852,117
Total Missouri premiums and earnings	$12,988,831
Deduct losses and expenses	11,548,741
Profit	$1,440,090
Deduct 5 per cent of the premium income for the Conflagration Fund, and 5 per cent of the premium income for the increased cost of doing business and increased Federal tax	1,213,671
We have a net profit of	226,419

Therefore, on this basis, the Insurance Companies would make only a profit of 2.859 per cent per annum on their Missouri Capital and Surplus.

In the foregoing calculations the referee has not deducted anything for the increase in fire losses, in material, and labor necessary to replacement of partial losses, which the uncontradicted evidence shows was increased from 40 per cent to 50 per cent, and when this increase is taken into consideration and the fact that 80 per cent of the losses are partial losses, the small profit shown would be much more than wiped out and a material loss would take its place, and this is figured upon the basis most favorable to the [fol. 3017] contention of respondent. The evidence shows that in Missouri the average insurance rate is 98 cents, and the loss ratio 55 per cent of the premiums; Nebraska rate is $1.41, and the loss ratio 50 per cent of the premiums; Kansas rate is $1.20, and the loss ratio 52 per cent of the premiums; Illinois rate is $1.06, and the loss ratio 49 per cent of the premiums; and Arkansas rate is $1.47 and the loss ratio 61½ per cent of the premiums.

Of the states above mentioned, Nebraska, Illinois and Kansas have granted an increase or surcharge.

A like increase has been granted in Ohio, Kentucky, Michigan, Indiana, Tennessee, Iowa, Minnesota, North Dakota, South Dakota, Colorado, Wyoming and New Mexico. The testimony shows that no State has denied such an increase.

If the relators, figures for the past five years are taken into consideration, the companies, without considering the increased Federal taxes, the increased cost of doing business, and the increased cost of labor and materials, the showing is that for five years the fire losses have been 63.1 per cent of the premium receipts; that the cost of doing business in Missouri was 41 per cent of premiums, which show a loss not taking into consideration the 5 per cent Conflagration Fund.

These figures, however, do not give credit for the money made by the Banking Department, and therefore are not followed by the referee.

Wherefore, the referee, upon the evidence introduced before him, finds that the order of the Superintendent of The Insurance Department, refusing to grant the increase in rates as asked by the Insurance Companies, was unreasonable.

And it further appearing to the court that the exceptions which have been filed to the said report of said referee [fol. 3018] by respondent after the court has read and duly considered the same are without merit and therefore are overruled, and the court does, after full and careful consideration, approve in all respects the report filed by said Honorable Roy D. Williams, referee, as aforesaid, and the court doth order, adjudge and decree:

That the order and direction of the respondent, A. L. Harty, Superintendent of the Insurance Department of the State of Missouri, rejecting the filing in his office by the said relators of certain rates and schedules of rates, by which they, as attorneys-in-fact for one hundred and forty-five fire insurance companies doing business in the State of Missouri, proposed to increase all fire insurance rates in the State of Missouri to the extent of ten per cent (10 per cent) over and above the rates then and now charged and permitted to be charged by the said insurance companies in the State of Missouri, applying for his approval thereof, such rates to be effective from and after ten (10) days

after the filing of said proposed schedule and said proposed increase of rates; and refusing to permit said rates and said increase thereof to become effective and operative in the State of Missouri; was, and is unreasonable, erroneous and in derogation of the just rights of the said petitioners.

It is further ordered that the orders and directions of the said Superintendent of Insurance under revies herein, be, and the same are, in all respects set aside, vacated and for naught held; and it is ordered that the said relators, James A. Waterworth and Harold M. Hess, attorneys-in-fact as aforesaid, be permitted to file, in the office of the Superintendent of Insurance, the said proposed schedule and the said proposed increase of all fire insur- [fol. 3019] ance rates in the State of Missouri to the extent of ten per cent (10 per cent) over and above the rates now charged and permitted to be charged by the insurance companies in the State of Missouri, and that said A. L. Harty, Superintendent of the Insurance of the State of Missouri approve such filings and increase of rates so filed by said James A. Waterworth and Harold M. Hess, attorneys-in-fact for said insurance companies as aforesaid, and that said increase of rates be and are effective in the State of Missouri forthwith.

And the court doth further order, adjudge and decree that the Honorably Roy D. Williams, referee as aforesaid, be allowed the sum of three thousand seventy-five ($3,075.00) dollars plus one hundred ten ($110.00) dollars for expenses, for his services as such referee.

And the court doth further order adjudge and decree that the stenographer, John Q. Bybee, be allowed the sum of five hundred seventy-four ($574.49) dollars and forty-nine cents for his services in this case, and that these amounts be taxed as costs in the said cause, and that the respondent pay all the costs incident to this suit.

Dated this 20th day of January, 1919.

To the giving of which judgment, respondent here and now and at the time thereof excepts and saves his exceptions. (Rec. U. p. 281.)

Thereafter, during the same term of said court, and within four days after the rendition of said judgment, and

upon the same day, to-wit: January 20, 1919, respondent filed his motion for a new trial, which said motion is set out in full in the bill of exceptions herein, to which express reference is hereby made and the same called for as a part hereof.

Thereupon, during the same term of said court, and on the same day, to-wit: January 20, 1919, respondent's said [fol. 3020] motion was by the court overruled, respondent objecting and excepting and saving his exceptions (Rec. U. p. 282).

Thereafter, during the same term of said court, and within four days after the rendition of said judgment, and upon the same day, to-wit: January 20, 1919, respondent filed his motion in arrest of judgment (Rec. U. p. 282), which said motion is set out in full in the bill of exceptions herein, to which express reference is hereby made and the same called for as a part hereof.

Thereupon, during the same term of said court, and on the same day, to-wit: January 20, 1919, respondent's motion in arrest was by the court overruled, respondent objecting and excepting and saving his exceptions thereto (Rec. U. p. 282).

Thereafter, during the same term of said court, and upon the same day, to-wit: January 20, 1919, the court granted respondent until on or before the first Monday in March, 1919, in which to file his bill of exceptions in said cause (Rec. U. p. 282).

Thereafter, during the said regular November term, 1918, of said court, and on the day last aforesaid, to-wit: January 20, 1919, respondent filed his affidavit for an appeal in said cause, the same being set out in full in the bill of exceptions herein, to which express reference is hereby made and the same called for as a part hereof; and an appeal to the Supreme Court of Missouri was thereupon at the time and on the day last aforesaid granted respondent by the court:

"Now at this day comes the respondent by his attorney and presents to the court his application and affidavit for appeal, which said application and affidavit for appeal is ordered filed, and now being taken up, examined and found [fol. 3021] sufficient, it is thereupon ordered by the court that an appeal herein be and the same is hereby granted to

the Supreme Court of the State of Missouri." (Rec. U. p. 282.)

Thereafter, during said November term, 1918, and within the time allowed therefor, to-wit: On the 26th day of February, 1919, respondent presented his bill of exceptions, and the same was by the court allowed and signed, and made and entered as a part of the record in said cause, and was by the clerk of said court, on the 26th day of February, 1919, duly filed and a record entry made thereof (Rec. U. p. —), which said bill of Exceptions is as follows:

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI,
JUNE TERM, 1918

STATE OF MISSOURI at the Relation of JAMES A. WATERWORTH and HAROLD M. HESS, Relators,

vs.

A. L. HARTY, Superintendent of the Insurance Department of the State of Missouri, Respondent.

Bill of Exceptions

Be it ever remembered, that heretofore, to-wit, on Tuesday, the 30th day of July, 1918, the same being the sixteenth judicial day of the regular June term, 1918, of the Circuit Court of Cole County, Missouri, begun and held in the city of Jefferson, in the county of Cole and State of Missouri, before the Hon. J. G. Slate, the regular Judge of said court, the above entitled matter came on for hearing, all of the parties being present in court, and the following proceedings were had in due form of law therein, as follows, to-wit:

[fol. 3022] Hon. C. G. Revelle and Hon. John S. Leahy appearing as counsel for and on behalf of the relators.

Attorney-General Frank W. McAllister and Assistant Attorney-General John T. Gose appearing for and on behalf of the respondent.

Now, on this, the 30th day of July, 1918, the sixteenth judicial day of the regular June term, 1918, of said court, all the parties to the above entitled cause being present in court, the following record was made herein, to-wit:

"State of Missouri at the Relation of James A. Waterworth and Harold M. Hess, Relators,

vs.

A. L. Harty, Superintendent of the Insurance Department of the State of Missouri, Respondent.

Now at this day come the parties hereto by their respective attorneys and agree that it will be necessary to appoint a referee to hear testimony in this case and determine the facts as well as the law; and also agree that Roy D. Williams is a proper and competent person to act as such referee.

It is thereupon ordered by the court that Roy D. Williams be and is hereby appointed as such referee with full power to hear evidence and make a finding thereon of both law and facts in this case and report his finding to this court as soon as practicable."

Thereafter, to wit, on the 21st day of August, 1918, during the regular June term, 1918, of said court, Roy D. Williams, named by this court as referee, by agreement of counsel, as set forth hereinabove, comes and files in said cause his oath, which said oath is in writing and appearing in the words and figures following, to-wit:

[fol. 3023] "State of Missouri,
County of Cooper, ss:

State ex Rel. James A. Waterworth and Harold M. Hess, Plaintiffs,

vs.

A. L. Harty, Superintendent of the Insurance Department of the State of Missouri, Defendant

Roy D. Williams having been appointed as referee in the above entitled case and being by me duly sworn upon his oath states that he will faithfully and fairly hear and examine the above entitled cause and make a just, impartial and true report according to the best of his understanding as such referee.

Roy D. Williams.

Subscribed and sworn to before me this 21st day of August, 1918. Chas. L. Pettit, Clerk of the Circuit Court of Cole County, by Kenneth Wilhite, C. D. (Seal.)"

Thereupon, the parties to this action, by their counsel, entered into and filed with the said referee, Roy D. Williams, a stipulation, in writing, which said stipulation so filed with the referee aforesaid is in the words and figures following:

[fol. 3024] "IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

Before Roy D. Williams, Referee

STATE ex Rel. JAMES A. WATERWORTH and HAROLD M. HESS, Plaintiffs,

vs.

A. L. HARTY, Superintendent of the Insurance Department of the State of Missouri, Defendant

I

It is hereby stipulated and agreed, by and between the parties that the first hearing of the above entitled case shall be at Jefferson City, on August 21, 1918, and that notice thereof is hereby waived and that future hearings may be had without written notice thereof.

II

That the compensation of the referee shall be reasonable, and said compensation shall be without regard to the statutory allowance, and also the necessary and reasonable traveling expenses of said referee shall be allowed, and that the said compensation and said traveling expenses shall be taxed as costs.

[fol. 3025] III

That the stenographer's fees and traveling expenses shall be taxed as costs.

John S. Leahy, Charles G. Revelle, Attorneys for Plaintiff. Frank W. McAllister, Attorney-General; John T. Gose, Assistant Attorney-General, Attorneys for Defendant."

Thereafter, to-wit, beginning on the 21st day of August, 1918, and continuing therefrom on the days and dates and at the places hereinafter specified, the Hon. Roy D. Williams, the referee aforesaid so appointed and commissioned by said court "to hear testimony in this case, and to determine the facts as well as the law," and to report his findings to the said Circuit Court of Cole county, Missouri, did proceed to take testimony, examine witnesses, records, papers, files, and to hear all evidence produced by both relators and respondent, oral and documentary; all of which evidence of every kind and description so heard by the said referee aforesaid has been reduced to writing and herewith appears in the words and figures following:

All evidence heard by the referee.

[fol. 3026] In the Circuit Court of Cole County, Missouri, June Term, 1918

State of Missouri at the Relation of James A. Waterworth and Harold M. Hess, Relators,

vs.

A. L. Harty, Superintendent of the Insurance Department of the State of Missouri, Respondent

Be it ever remembered, that heretofore, to-wit, beginning on Wednesday, the 21st day of August, 1918, in the city of Jefferson, in the county of Cole and State of Missouri, the above entitled matter came on for hearing before special commissioner, the Hon. Roy D. Williams, com-

missioned by the Circuit Court of Cole county, Missouri, and duly sworn to try, hear and determine said cause and true report make to said court on the law and the facts herein, and all the parties being now present and announcing ready to proceed, the following proceedings, among others, were had in due form of law, as follows, to-wit:

Hon. C. G. Revelle and Hon. J. S. Leahy appearing on the part of the relators.

Attorney-General McAllister and Assistant Attorney-General Gose appearing on behalf of the respondent.

The Commissioner: Gentlemen, are you ready to proceed?

General Gose: If the Commissioner please, Attorney-General McAllister has not come in yet. I would prefer to wait for him before starting.

The Commissioner: Very well.

Mr. Revelle: I wonder if while waiting for General [fol. 3027] McAllister you would be willing to let the record show, or be willing to admit that we made an application to the Insurance Department?

General Gose: You asked for these files, hadn't you just better put the witnesses on the stand and identify them? That would be the better way. You know you asked for the reproduction of the files. Now you ask for the record to be sent over.

The Commissioner: Do I understand you can amend the pleadings at any time before the decision of the court or referee?

General Gose: Well, I have always understood that in referee hearings of this kind you could.

The Commissioner: Sir?

General Gose: I say I have always understood that. You gentlemen want that admission?

Mr. Revelle: Oh, it doesn't matter to us.

Mr. Leahy: What is that?

Mr. Revelle: As to this understanding as to amending the pleadings.

General Gose: I have always understood before a man might amend his pleadings.

Mr. Revelle: I really think perhaps that out of fairness to the Commissioner any pleadings that we want to file,

any amendments to be made, should be made before he makes his report.

General Gose: Sure; sure.

Mr. Revelle: Supposing we have that understanding then.

The Commissioner: Before the decision by the court, that is what I was getting at.

General Gose: Yes; yes; upon application to the Commissioner, with his permission.

Mr. Revelle: Yes, all right.

[fol. 3028] Mr. Leahy: Upon application then at any time prior to the report of the Commissioner the pleadings may be amended by either party.

Mr. Revelle: May I ask, Your Honor, have you read the petition?

The Commissioner: Yes, sir.

Mr. Revelle: And the answer?

The Commissioner: Yes, I read it this morning.

Mr. Revelle: It is not necessary for us to read them then?

The Commissioner: I take it, it is not. Are you now ready to proceed, general?

General McAllister: Yes, Your Honor.

The Commissioner: Proceed.

Thereupon, the relators, by their counsel, in order to sustain the issues on their behalf to be sustained, made the following admissions and offered the following evidence, to-wit:

Mr. Leahy: Call Mr. Davis.

J. M. Davis, of lawful age, produced as a witness on the part of the relators, being first duly sworn, upon examination testified as follows, to-wit:

Direct examination by Mr. Leahy:

Q. State your name please?

A. J. M. Davis.

General Gose: If the Commissioner please, before any evidence is heard I wish to make some objections to the taking of any evidence under the petition.

I wish to object to the taking of any evidence under the petition because said petition does not state facts sufficient

to constitute a cause of action against this defendant, in this, to-wit:

First, said petition shows upon its face that it is an endeavor to force this defendant to approve an increase of a [fol. 3029] flat ten per cent on all insurance rates in the State of Missouri now charged and permitted to be charged by fire insurance companies in said state, when in fact this defendant has no jurisdiction or power to increase such insurance rates now in force in this state by approving a flat ten per cent increase to be added to all rates of fire insurance companies now in force in this state, and that this court has no power, authority or jurisdiction to order or compel this defendant to approve any rates or schedule of rates adding a flat increase of ten per cent to all rates of fire insurance companies now in force in this state.

Second, said petition shows upon its face that this action is an attempt upon the part of the relators to have this court act as a rate-fixing power and usurp legislative functions and powers in direct violation of article 3 of the Constitution of Missouri.

Third, said petition shows upon its face that relators seek to have the flat increase of ten per cent applied for to all rates of fire insurance companies within the State without distinction or difference, including classes, risk and hazards, in the face of and in conflict with the purposes and principles of the law now in force regulating fire insurance rates in this State.

Fourth, said petition shows upon its face that the relief sought by relators is such that can be granted by the General Assembly only, and is not within the province or power of this court.

Fifth, said petition shows upon its face that it is an attempt upon the part of relators to review and control by this court its power to approve or reject rates and schedule of rates filed by insurance companies or actuarial powers, when such power possessed by respondent is, under the law, discretionary and not subject to control or review by this court.

[fol. 3030] Sixth, said petition shows upon its face that it is an attempt upon the part of relators to null and void one of the conditions fixed and necessarily in the General Assembly as precedent to fire insurance companies continuing business in this State; namely, the acquiescence in and acceptance by the respondent's approval or disapproval of rates and schedule of rates filed by insurance companies by actuarial powers petitioning increase of rates then in force.

The Commissioner: Do you want to be heard further on that at the present time?

General Gose: No.

The Commissioner: You raise all those questions in your answer?

General Gose: Yes.

The Commissioner: Objection overruled.

General Gose: Exception saved.

To which ruling by the Commissioner, the respondent, by his counsel, then and there duly excepted at the time and still excepts.

The Commissioner: I suppose all adverse rulings are excepted to anyway, are they not? Just put that in the record because we may forget it sometimes.

Mr. Revelle: Yes.

Mr. Leahy: You have stated your name, have you?

A. Yes.

Q. What, if any, official connection have you with the office of the Superintendent of Insurance?

A. Why, as chief rater of the rating department.

Q. How long have you occupied that position?

A. Since the first of February, 1917—1918, I mean.

Q. Do you recall that there was an application filed by James A. Waterworth and Harold M. Hess on behalf of all [fol. 3031] the fire insurance companies doing business in this State, requesting an increase in rates, and that a hearing was had before the then acting Superintendent of the Insurance Department?

A. I recall that, yes, sir.

Q. Do you remember when that was?

A. I have not the documentary——

General Gose: I suggest, Your Honor, that the papers themselves and records of the department would be the best evidence on that.

Mr. Leahy: Well, that is quite true.

The Commissioner: I think that is true.

The Witness: I will have to refer to those to get the exact dates; I cannot recall them by memory.

Mr. Leahy: I do not expect it has been sent over here.

The Commissioner: Could you get the papers?

The Witness: I do not know where this notice——

General Gose: Who had charge of those papers?

A. Mr. Clark I presume.

Mr. Leahy: I will see if I can't get those. Will you see about those, Mr. Boyles? We will substitute that.

The Commissioner: Yes. You might testify that the document was presented, and as to the date, that may be supplied.

Mr. Leahy: Well, were you present at the hearing?

A. Yes, sir.

Mr. Boyles: Mr. Clark has the original papers here and seems to be familiar with them.

Mr. Leahy: We will withdraw Mr. Davis and put Mr. Clark on.

Witness excused.

[fol. 3032] Claude L. Clark, of lawful age, produced as a witness on the part of the relators, being first duly sworn, upon examination testified as follows, to-wit:

Direct Examination by Mr. Leahy:

Q. What is your name?

A. Claud L. Clark.

Q. You were acting Superintendent of the Insurance Department, this Department, were you not?

A. Yes, sir.

Q. At what time?

A. Well, I think from about May—March 4th. I am not right sure about that date; about that time.

Q. I show you a paper which is dated March 27, 1918, and signed by James A. Waterworth and Harold M. Hess, and

ask you whether or not that paper was filed with you as acting Superintendent of the Insurance Department on or about the 27th day of the March last? (Showing witness paper.)

A. Yes, sir.

Q. The reasons for filing that application for an increase in rates are set out in writing in the paper attached thereto; was that also filed with you?

A. Yes, sir.

Q. And on and after the 27th day of March last did you have a hearing with reference to the propriety of granting the increase in rates as requested?

A. Yes, sir.

Q. You thereupon about the 23rd day of April, 1918, filed a declination of such request for the increase in these rates, did you not?

A. Yes, sir, on April 26th.

Q. 26? And is that paper writing before you declining [fol. 3033] to allow this increase—that the paper you now hold in your hand?

A. A carbon copy of it is, yes, sir.

Q. And it is a true copy, is it?

A. Yes, sir.

Q. And thereafter you recollect that there was an application filed—thereafter Mr. Harty was appointed as Superintendent of Insurance?

A. Yes, sir.

Q. You are now, and were at the time of the appointment of Mr. Harty, the assistant, were you?

A. The deputy.

Q. The deputy?

A. Is the style.

Q. Do you recollect that some time after you had filed this refusal to grant the increase in the rates that a petition was filed here for a reopening and a rehearing of the matter?

A. Yes, sir; I remember that.

Q. And you recollect that the request for a reopening and rehearing was granted and that there was a further and an additional hearing.

A. I do not think I was here then.

Q. Some time after the petition for a rehearing had been filed with the Superintendent of the Insurance Department Mr. Harty, as such Superintendent, declined to grant the

increase in the rates as requested by Messrs. Waterworth and Hess, attorneys-in-fact, for the insurance companies?

A. I think that is correct.

Q. You recollect that?

A. There is a letter—a carbon copy attached here.

Q. Of Mr. Harty?

A. Yes, sir.

[fol. 3034] Q. Setting out that he would not, on a reconsideration that he would not grant the increase as prayed?

A. Yes, sir.

Mr. Leahy: May it please Your Honor, we now offer in evidence the original petition and notice of an increase in rates filed in this Department on the 27th day of March, 1918, and all of the other papers attached thereto which are a part of this record.

General Gose: I suggest, Mr. Leahy, if I may, that you identify those and have Mr. Clark identify them as you introduce them.

Mr. Leahy: Yes, sir. This paper that is dated Jefferson City, the 27th day of March, 1918, signed by James A. Waterworth and Harold M. Hess, is what?

A. You want me to——

Q. Yes.

A. I suppose that is the petition. Let me see, the official designation is "Notice" I believe—herewith file notice—it is a notice of the increase in rates.

Q. Of ten per cent?

A. Of ten per cent.

Q. And it was on this notice that the hearing was had?

A. Yes, sir.

Mr. Leahy: We ask the stenographer to mark that as Exhibit 1.

(Said paper was here marked, for the purpose of identification, as requested by counsel, Exhibit 1.)

Mr. Leahy: We now offer in evidence Exhibit 1.

(Said Exhibit 1 now offered in evidence by Mr. Leahy being in writing and appearing in the words and figures following, to-wit:)

[fol. 3035] "To the Superintendent or Acting Superintendent of the Insurance Department of the State of Missouri:

The undersigned, James A. Waterworth and Harold M. Hess, attorneys-in-fact of all of the stock companies doing a fire, lightning and windstorm business in the State of Missouri as shown by powers of attorney heretofore filed with the Superintendent of the Insurance Department of the State of Missouri at Jefferson City, herewith file notice of an increase in the rates to be charged by said companies so represented for fire, lightning and windstorm insurance, and herewith file a flat rate of ten per cent (10 per cent) in advance and in increase of all rates filed with the Insurance Department, for, and on behalf of, all of said stock companies as evidenced by the public rating record maintained by the undersigned and filed with the Insurance Department:

And, notice is further given that the increase in rate, notice of which is herewith given and filing of which is herewith made, is to remain in force and only during the extraordinary conditions incident to the war in which our Country is now engaged and is to be added and applied as an emergency surcharge as shown by separate endorsement on each policy.

Dated at Jefferson City, Missouri, this 27th day of March, 1918.

James A. Waterworth, Harold M. Hess."

Mr. Leahy: Now, attached to Exhibit 1 is certain typewritten matter signed also by James A. Waterworth and Harold M. Hess, assigning the reasons for the notice of the increase in the rates, and that was filed with you at the same time?

A. Yes; yes.

[fol. 3036] Mr. Leahy: We will ask that be marked Exhibit 2.

(Said paper was here marked, for the purpose of identification, as requested by counsel, Exhibit 2.)

Mr. Leahy: We offer Exhibit 2 in evidence.

(Said Exhibit 2 just offered in evidence being in writing and appearing in the words and figures following, to-wit:)

"The undersigned, James A. Wentworth and Harold M. Hess, attorneys-in-fact for all of the stock companies doing a fire, lightning and windstorm insurance business in the State of Missouri as shown by powers of attorney heretofore given the undersigned and heretofore filed with the Insurance Department of the State of Missouri at Jefferson City, assign as reasons for the filing of the increased rate of ten per cent (10 per cent) the following:

First, Under the war revenue acts of September, 1916, and October, 1917, six separate and distinct taxes are imposed by the Government on the insurance companies for which the undersigned are attorneys-in-fact as follows:

(a) Capital stock tax.

(b) Corporation income tax.

(c) Excess profits tax.

(d) Premium tax.

(e) Letter postage, telegraph and telephone messages increase.

(f) Pullman and railroad fares increase.

The aggregate of these additional taxes can not be precisely determined and will vary with different companies but predicated on experience the undersigned believe that the tax will approximately be 3.32% of the net premiums collected on business done in the State of Missouri. [fol. 3037] The above tax is in addition to the general taxes, licenses and fees, federal, state and local which, examination of records show to average about six per cent (6%) on the premiums received.

Second, increase in the general expense of conducting business:

(a) Increase in salaries.

(b) Increase in the cost of printing and supplies.

(c) Rating Bureau inspection, surveys, protective departments and Fire Prevention Bureau expenses.

The additional cost on the matters included in this second paragraph cannot be definitely determined but the experience of the undersigned from investigation leads them to believe that it will amount to 1.82% of the net premiums received on business done in Missouri.

Third, experience shows that eighty per cent (80%) of fire losses in value in Missouri are partial losses, and under

the terms of all policies the companies are obliged to replace the partial loss or pay the cost of so doing to the assured. Figures from architects and builders will demonstrate:

(a) Increase in the cost of glass since the war began is 140%.

(b) Increase in the cost of iron since the war began is 75%.

(c) Increase in the cost of sheet metal, which includes galvanized iron, copper and tin since the war began is 83%.

(d) The increase in the cost of brick since the war began is 50%.

(e) The increase in the cost of labor since the war began is 20%.

(f) The general increase in the cost of all building construction labor since the war began is 40%.

[fol. 3038] By reason of the foregoing the increase in the cost of replacement for partial fire loss figured on the net premium is 19.2%.

Fourth, other factors which will materially decrease the net earnings of the companies and increase their losses, which can not however be definitely figured are:

(a) Losses from incendiary fires occasioned by alien enemies.

(b) Losses occasioned by increased physical hazard incident to over time work.

(c) Accumulation of debris, occasioned by sustained effort in turning out war materials.

(d) Lack of facilities for proper fire prevention and inspection on account of the shortage of properly trained men incident to the draft.

(e) Increase in hazard incident to extra hours of work and continuous operation of machinery.

(f) Over crowded condition of freight yards, depots, factories and business houses.

(g) Lack of properly trained men in the fire departments by reason of the army draft.

Fifth, statistics show that for the past twenty-one years the fire insurance stock companies have operated in Missouri at a loss. The figures of this department show that

during the past five years ending 1916, the said companies have operated in this state at an average loss on their fire insurance business of 9 per cent of their total net premiums received on their Missouri business, aggregating four million dollars ($4,000,000.00) for the period.

James A. Waterworth, Harold M. Hess."

[fol. 3039] Mr. Leahy: Here is a paper which is also attached marked, "Supplemental and additional reasons for increase"; was that also filed with you?

A. That was also filed.

Q. And you had that before you at the hearing and when you passed on this matter?

A. Yes, sir.

Mr. Leahy: Will you please mark that Exhibit 3?

(Said paper was marked, as counsel requested, Exhibit 3, for the purpose of identification.)

Mr. Leahy: We offer Exhibit 3 in evidence.

(Said Exhibit 3 just offered in evidence being in writing and appearing in the words and figures following, to-wit:)

"Supplemental and Additional Reasons for Increase

The undersigned James A. Waterworth and Harold M. Hess, attorneys-in-fact for all of the stock companies doing a fire, lightning and windstorm insurance business in the State of Missouri, since filing with the Insurance Department their reasons for asking for an approval of the increased rate of 10%, have come into possession of knowledge and information in addition to that disclosed by the reasons heretofore assigned as follows:

First. That instead of the increase in the cost of doing business based upon new and additional revenue acts as specified under paragraph "first" of their original reasons being 3.32 of the net premiums collected on business done in the State of Missouri, said increase is in fact 5% of the net premiums collected on business done in the State of Missouri.

[fol. 3040] Second. That relative to the matters set out in paragraph marked "fifth" of their original reasons the

experiences of the fire insurance companies doing business in the State of Missouri for a period of five years ending December 31, 1917, show that said companies have operated in the State of Missouri at an average loss on their fire insurance business of 6% of their total net premiums received on their Missouri business aggregating approximately $3,000,000.00 for said period; that at the time when said original reasons were filed on the 27th of March, 1918, the statistics and experiences of the fire insurance companies doing business in the State of Missouri for the year 1917, were not available or accessible, but that since that time the undersigned have come into possession of such statistics and experiences.

Third. The undersigned further say that since the filing of said original reasons they have come into possession of information and knowledge disclosing that since January 1st, 1918, up to and including the fourth day of April, 1918, the experiences of the fire insurance companies in the State of Missouri show that during that period the losses on property covered by insurance have greatly increased over the losses for a similar period during preceding years and that such losses for that part of 1918 have already amounted to such enormous sums as to consume the entire premium income for the whole year of 1918, less the necessary costs of operation.

James A. Waterworth, Harold M. Hess."

Mr. Leahy: Here is a typewritten copy of a document dated April 26, 1918, addressed to Messrs. James A. Waterworth and Harold M. Hess, attorneys-in-fact, which was [fol. 3041] signed by you as acting superintendent, was it?

A. Yes, sir.

Q. Now, this instrument was your decision after the hearing?

A. Yes, sir.

Q. On their petition to increase the rates?

A. Yes, sir.

Mr. Leahy: Please mark that Exhibit 4.

(Said instrument was here marked, for the purpose of identification, as Exhibit 4, as requested by counsel.)

Mr. Leahy: We offer Exhibit 4 in evidence.

(Said Exhibit 4, now offered in evidence, being in writing and appearing in the words and figures following, to-wit:)

"April 26, 1918.

Messrs. James A. Waterworth, and Harold M. Hess, Attorneys-in-fact, Pierce Building, St. Louis, Mo.

GENTLEMEN: On March 27th, for and on behalf of the stock fire insurance companies doing fire insurance, lightning and windstorm insurance business in the State of Missouri you filed with the Department notice of an increase in the rates to be charged by said companies for fire, lightning and windstorm insurance, the said increase to be a flat 10% advance or increase in all the rates on file with the Insurance Department.

The matter of the increase was set for hearing on April 5th and the companies appearing through their attorneys and through their attorneys-in-fact, Messrs. Waterworth & Hess, and filed certain affidavits and a written [fol. 3042] brief in justification of the increase in rates asked for under the filing.

As Acting Superintendent of the Insurance Department of the State of Missouri, I have carefully considered the whole matter and have reached the following conclusions:

First. That the proposed increase asked for is simply a flat rate increase of 10%.

Second. The showing made by the companies based entirely upon what is purported to be the experience of the companies on the fire insurance business alone, and does not purport to show the experience of the companies on lightning and cyclone insurance.

Third. It cannot be denied that there has been a substantial increase in the cost of transacting the three lines of business in the way of increased taxes, increased cost of material, etc.

Based upon the above conclusions, as set out, the 10% increase is denied for the following reasons:

First. It is a rate increase, and being a rate increase the companies have failed to make a showing justifying such increase in rates.

The department accepted on October 1, 1917, substantially a filing made by the companies looking to a complete readjustment of rates in Missouri. The time elasping between the date and the date of the present filing is not sufficient for the companies to have put into effect the rates based on the readjustment, and therefore it is impossible to ascertain whether or not the proposed readjustment is going to take care of the matters complained of in this petition for a rate increase.

Second. The showing made is incomplete for the reason that the experience on lightning and cyclone insurance is not touched upon in the evidence produced and as the in- [fol. 3043] crease asked for covers this class of business, it is necessary to make a full and complete showing on these classes of insurance. In addition to a complete showing on the classes referred to, the companies should make a full and complete showing covering all of the lines of business transacted in this state by the companies, including the automobile business involving the fire risk upon which they make a filing with the Department, and a full and complete showing should be made covering sprinkler leakage business transacted in this state, as it would be manifestly unfair to make certain lines of the business carry the whole of the proposed increase on account of the alleged war conditions.

Third. While there has undoubtedly been a substantial increase in the cost of transacting the various lines of the fire insurance business, yet every other class of business in this country has experienced similar increases in the cost of the transaction of business.

It is conceded that under the law the increase of the companies in this state is more or less fixed and in order to enable them to transact business at a profit, the matters complained of must be carefully considered in fixing the rates which the companies may charge. The evidence and affidavits submitted are to a very large extent more or less conclusions, and while a complete showing might justify the proposed increase, I do not feel that the showing made does justify the increase.

Yours very truly, Acting Superintendent."

Mr. Leahy: You remember that on the 16th day of May, Messrs, James A. Waterworth and Harold M. Hess, attorneys-in-fact for the insurance companies filed a motion to [fol. 3044] reopen, re-hear and grant the application of those parties?

A. Yes, sir.

Q. You have made search for that motion and you do not find it?

A. Well, I think it is in our files.

Q. You think you will be able to find it?

General Gose: I suggest you introduce that motion now to be supplied later.

Mr. Leahy: Yes, sir; all right. We have a ca[illegible]on I think.

The Witness: I think it is there.

Mr. Leahy: We introduce notice and ask that it be marked Exhibit 5, or rather a motion of Messrs. James A. Waterworth and Harold M. Hess, attorneys-in-fact for the insurance companies, to re-open, re-hear and grant the application of the said attorneys-in-fact in accord with their filing of March 27, 1918.

(Said motion was marked as relators' Exhibit 5, the same being introduced, and is in writing and in the words and figures following, to-wit:)

RELATORS' EXHIBIT 5

"STATE OF MISSOURI,
County of Cole, ss:

In the Matter of the Application for an Increase of Ten per Cent in Fire Insurance Rates in the State of Missouri

Come now James A. Waterworth and Harold M. Hess, attorneys-in-fact for the insurance companies doing a fire insurance business in the State of Missouri and move the Superintendent of the Insurance department of the State of Missouri to reopen, rehear and grant the application for [fol. 3045] an increase of ten per cent in the fire insurance

rates in the State of Missouri, which application was filed on March 27, 1918, by said James A. Waterworth and Harold M. Hess as attorneys-in-fact and for and in behalf of the insurance companies doing a fire insurance business in the State of Missouri, and for reasons for this motion say:

1

The Acting Superintendent of the Insurance Department erred in holding that the insurance companies through their attorneys-in-fact and attorneys at law failed to make such a showing as would justify such increase in rates. This holding is erroneous for the following reasons:

(a) The official records of the Insurance Department which were in the care and keeping of the Acting Superintendent of the Insurance department and which were offered and treated in evidence conclusively disclose that during the five years next preceding the filing of the application herein, the insurance companies transacted and did business in the State of Missouri at a great financial loss and that the rates charged during that time were wholly inadequate to enable the companies to pay their losses and legitimate operating expenses and discharge their lawful obligations.

(b) Because the official records of the Insurance Department and the testimony offered by these applicants clearly and conclusively establish that the rates which the companies are now permitted to charge are wholly inadequate and will not enable the fire insurance companies to transact their ordinary and legitimate business in the State of Missouri except at a great financial loss.

(c) The evidence submitted by these applicants for the consideration of the Acting Superintendent of Insurance [fol. 3046] conclusively establishes that since the beginning of the war in which our country is now engaged, conditions in the fire insurance business have materially changed and the fire hazards have materially and greatly increased and that these conditions will during the existence of the war greatly increase the losses which must be paid by the companies and will greatly increase the legitimate and necessary expenses on the part of the companies in transacting their business in the State of Missouri.

(d) Because the evidence submitted to the Acting Superintendent of the Insurance Department clearly establishes that the losses that have been paid and which must be paid for the year 1918, have increased and will greatly increase in the State of Missouri over and above the losses of preceding years and that the rates which the companies are now permitted to charge are and will be wholly insufficient and inadequate to pay such losses and necessary operating expenses.

(e) Because the evidence submitted to the Acting Superintendent of the Insurance Department conclusively establishes that approximately eighty per cent of the fire insurance losses in the State of Missouri are partial losses and that in each and all of such losses the cost of replacement is the measure of the insurer's liability; that this cost of replacement has since the beginning of the war increased to such an extent as to represent approximately twenty per cent of the premium income received by the insurers on risks in the State of Missouri.

(f) That when the present rates were fixed and determined none of the unusual conditions and rate making elements which have been brought about by the war were considered or made an element of the rates now in force.

[fol. 3047] 2

The Acting Superintendent of the Insurance Department erred in holding that on October 1, 1917, a complete readjustment of rates in Missouri was made and approved and this finding is erroneous for the following reasons.

(a) The records of the Insurance Department and to which applicants now call special attention clearly disclose that the filing of Oct. 1, 1917, was not intended to and did not constitute a complete readjustment of rates in Missouri, but to the contrary was and constituted but a change in the term rule and that it in no manner affected the main and principal schedule of rates then in force or now in force in the State of Missouri.

(b) Because it conclusively appears from the official records of the Insurance Department and the evidence submitted by applicants that the change then made in certain

of the rates in Missouri did not and will not produce such premiums and income to the fire insurance companies as to enable them to continue to operate in the State of Missouri except at a great financial loss.

3

Because the Acting Superintendent of the Insurance Department erred in holding that the filing of Oct. 1, 1917, constituted a complete readjustment of rates in Missouri and that the time elapsing between that date and the date of the present filing is not sufficient to enable the insurance companies or the Insurance Department to determine that said changes in rates will not take care of the matters com- [fol. 3048] plained of in this application for an increase in rates. This finding is erroneous.

(a) That as above pointed out said filing did not constitute a readjustment of rates in the State of Missouri, but merely affected the application of the term rule which is not applicable to the large and major portion of the rates and risks in the State of Missouri.

(b) Because the official records of the Insurance Department conclusively establish that said change or alleged readjustment will not produce sufficient premiums and income to take care of legitimate losses and necessary operating expenses under conditions such as existed in the State of Missouri for a period of five years preceding the beginning of the war.

(c) Because it conclusively appears from the official records of the Insurance department and the evidence submitted by applicants that since Oct. 1, 1917, the legitimate losses of the companies and their necessary operating expenses have so increased and conditions have so substantially changed and will remain so changed during the war that said change or alleged readjustment of rates of Oct. 1, 1917, will not take care of the conditions complained of by applicants and will not produce sufficient premiums and income to enable the companies to operate except at a great financial loss.

(e) Because it conclusively appears from the matters and things in evidence that at the time of said filing of

Oct. 1st, the conditions and rate making elements which made necessary an increase in rates were not considered and that said change was made without any regard thereto and was made, as above stated, for the purpose of changing the term rule.

[fol. 3049] (f) Because while said filing was made as of Oct. 1, 1917, it was in point of fact made up and considered under conditions which existed more than a year prior thereto and not conditions existing on Oct. 1, 1917.

4

Because the Acting Superintendent of the Insurance Department erred in holding the showing to be incomplete for the alleged reason that the experiences of the companies on lightning and cyclone insurance was not produced or offered for consideration. This finding is erroneous in that:

(a) There is no such thing as "lightning insurance," this hazard being covered by and included in fire insurance and the experiences of the companies on this hazard being included in their experiences on ordinary fire business.

(b) Because the experiences of the companies on cyclone business are matters of official record in the Insurance Department and such official records conclusively establish that the premium income from that branch of the business is wholly insufficient when added to the fire insurance income of the companies to enable the companies to pay their legitimate losses and necessary operating expenses.

(c) Because under the statute regulating fire insurance rates in the State of Missouri, it is the duty of the Insurance Department to permit and authorize the increase applied for and finally direct the lines or classes of business to which the necessary total increase shall be made applicable.

(d) Because under the law the Acting Superintendent of the Insurance Department is not warranted in denying an increase in the rates generally where the evidence shows [fol. 3050] such increase to be necessary merely because

there is one class of business on which he does not deem an increase necessary.

5

Because the Acting Superintendent of Insurance erred in holding that the application for increase should be denied for the alleged reason that a detailed and separate showing should be made upon each and all classes of insurance risks and that such showings had not been made. This finding is erroneous in that:

(a) The official records of the Insurance-department of which the Superintendent or Acting Superintendent must take notice contains and discloses the experiences of the companies on all lines and classes of the fire insurance business and these experiences conclusively establish that during the five years next preceding the filing of the application and the hearing thereon, the insurance companies had received no profit whatever on their business in Missouri, but to the contrary had operated and transacted business at a great financial loss.

(b) The Acting Superintendent of the Insurance Department is not warranted under the law in denying and refusing an increase in rates when it appears that the aggregate income of the companies is not in excess of their legitimate losses and necessary expenses and expenditures merely because some class or classes of risks have not proved unprofitable, it being the duty of the Superintendent under such conditions to authorize such increase as may be necessary to bring the aggregate premiums and income up to a point where legitimate losses and necessary expenses can be paid and a reasonable profit had and to finally [fol. 3051] direct the classes to which the increase shall be made applicable and the classes to which it shall not be made applicable.

(c) Because a complete showing on all these matters was made and because the best evidence thereof, to-wit, the official records of the Insurance Department, clearly and conclusively establish that the combined experiences of the companies upon all classes show that the increase prayed for is warranted and should be granted.

The Acting Superintendent of the Insurance Department correctly found that there had been a substantial increase in the cost of transacting the various lines of the fire insurance business in the State of Missouri since the present rates were made, but erred in refusing and denying the application for an increase here on the ground that other classes of business in the country had experienced similar increases in the cost of the transaction of their business. This finding is erroneous in that:

(a) The Insurance Department is charged with the duty of requiring insurance companies to charge and collect such rates and to otherwise conduct their business in such a manner as to make and keep them safe and solvent and in a condition to meet their obligations, while with other lines of business it has no such duty. The public is vitally concerned in the solvency and adequate financial condition of insurance companies and it is to the interest of the public that this particular class of companies charge sufficient and adequate rates, while with most other lines of business the public is not in this way concerned.

[fol. 3052] (b) It is a matter of common knowledge that while the cost of transacting other business has increased, it is also true that in each and all of such cases, except in the case of fire insurance business in the State of Missouri, the rates and charges of such other lines of business have increased in proportion to the increase of their cost of doing business.

(c) Because with all other lines of business, except fire insurance business, in the State of Missouri, an increase in the cost to the public has resulted and has been permitted and is now being allowed.

(d) The very fact of such increase in the price and costs of other classes of business and the articles and things with which they are concerned has resulted in an increase of the insurance hazard which was not considered at the time the present rates were made and authorized.

The Acting Superintendent of the Insurance Department erred in holding that the evidence and affidavits submitted at the hearing were to a very large extent conclusions. This is erroneous in that:

(a) Affidavits instead of oral testimony or formal depositions were submitted by the applicants at the instance of and with the approval of the Acting Superintendent of the Insurance Department.

(b) Because at and prior to the hearing, applicants offered to furnish the Acting Superintendent of the Insurance Department with any and all evidence he desired or deemed important in relation to the matters mentioned in the affidavits, and offered to produce any character of evidence in that relation which the Acting Superintendent [fol. 3053] of Insurance might desire or request and the affidavits furnished were all that the Acting Superintendent requested.

(c) Because such affidavits are not conclusions, but verified statements of facts.

(d) Because the affidavits relate merely to the increase in the price and cost of labor and replacement material, all of which is within the common knowledge of all persons.

Applicants now offer to show by competent evidence to the complete satisfaction of the Superintendent of the Insurance Department any and all of the facts stated and alleged in this motion and pray to be permitted to do so and to have authority to apply and collect the increase in rates prayed for in their application and filing.

Respectfully submitted, James A. Waterworth, Harold M. Hess, John S. Leahy, Chas. G. Revelle, Attorneys."

Mr. Leahy: Now, where is the finding of Mr. Harty?

A. This is, I presume—this is a carbon copy. We copy our letters in a copy-book. This shows the original to be correct.

Q. I show you now a document which purports—which is dated May 27, 1918, and addressed, "Hon. Chas. G. Revelle, Suite 614-616 Title Guaranty Building, St. Louis, Missouri," and appears to have been signed by the Superintendent of the Insurance Department, and ask you if that was the finding of the Superintendent of the Insurance Department on the motion to reopen, rehear and grant the [fol. 3054] application of Messrs. Waterworth and Hess, attorneys-in-fact of the insurance companies?

A. If I could verify this by the copy-book—I think it is correct.

Q. All right.

A. I can do that, and if it is not——

Q. You know that is a carbon copy, don't you?

A. Yes.

Mr. Leahy: Mark that then as Exhibit 6.

(Said letter marked, for the purposes of identification, as Exhibit 6, as requested by counsel.)

Mr. Leahy: We offer that in evidence.

(Said Exhibit 6, just offered in evidence, being in writing and appearing in the words and figures following, to-wit:)

"May 27, 1918.

Hon. Chas. G. Revelle, Suite 614-616 Title Guaranty Bldg., St. Louis, Missouri.

My Dear Mr. Revelle: I am in receipt of your favor of the 16th inst. containing a motion to reopen, rehear and grant the application of James A. Waterworth and Harold M. Hess, attorneys-in-fact for the stock fire insurance companies doing business in this state, for an increase of 10% in the rates to be charged by said companies on the fire, lightning and wind insurance in this state.

This application was made in pursuance of a notice filed in this office of an increase in the rates to be charged by said companies, said increase being a flat rate of 10% in advance and an increase of all rates filed with the Insur-

ance Department, for, and in behalf of all of said stock companies as evidenced by the public rating record maintained by said companies and filed with this department. [fol. 3055] This application was denied by the Hon. Claud L. Clark, Acting Superintendent of Insurance, before I was inducted into office, and I am asked to reverse his ruling, at least to the extent of reopening and rehearing the application.

I have carefully considered the application and the evidence adduced in support thereof and I find that the proposed increase of 10% is unreasonable and unjustifiable and I refuse to approve the same. The finding of Mr. Clark stands and I decline to reopen the matter. The ruling of this department is that it shall be unlawful for any insurance company or any other insurer to charge or collect such increase in rate or any part thereof.

Yours very truly,

—— ——, Superintendent."

Mr. Leahy: Mr. Clark, you are familiar with the records of the Insurance Department in this State are you?

A. Yes, sir.

Q. And the papers that I have just exhibited to you and which you have identified, and have been marked Exhibits 1 to 6, inclusive, are the only papers in this Department, or record, with reference to the application of Messrs. Waterworth and Hess in the matter of their application for the increase of the rates as filed here on the 27th of March?

A. Well, there are a lot of affidavits and things that were submitted.

Q. Well, that was evidence; those were the evidence.

A. Yes.

Q. But these are the records of this Department; that is, the papers that you have just identified are the records of [fol. 3056] this Department in reference to the application of Messrs. Waterworth and Hess, with reference to the finding of the Acting Superintendent, with reference to the motion for a rehearing, and with reference to the finding of the Superintendent of the Insurance Department on the motion for a rehearing?

A. Yes, sir.

Mr. Leahy: That is all.
The Witness: These go into your files?
Mr. Leahy: We will copy those into this record.

General Gose: By agreement copies may be made and substituted for Exhibits 1 to 6, inclusive.
Mr. Leahy: That is all, Mr. Clark.
General Gose: No questions.

Witness excused.

J. M. Davis, recalled on the part of the relators, having been sworn heretofore, upon examination testified as follows, to-wit:

Direct examination by Mr. Leahy:

Q. Mr. Davis, you were heretofore sworn in this hearing and I believe you testified you were in charge of the rating department of the Insurance Department of the State of Missouri?
A. Yes, sir.
Q. How long have you been in the department—in the Insurance Department of this State?
A. Since February 1, 1918.
Q. And prior to that time what was your business?
A. Why, I was connected with the Michigan Inspection Bureau in Detroit.
Q. What do you mean by the "Inspection Bureau of Detroit"?
[fol. 3057] A. Why, the rate making organization for Michigan.
Q. Rate making organization for Michigan in connection with the fire insurance?
A. Yes, sir.
Q. How long were you connected with that department?
A. Approximately two years.
Q. Two years?
A. Yes, sir.
Q. And prior to that what was your business?
A. Well it goes back over a series of years. For two years prior to my connection at Detroit I was in Pittsburgh.

Q. In what business?

A. I was known as "Special Risk Man" for the National Union Fire Insurance Company.

Q. You have been in the insurance business for some years?

A. Approximately eleven years.

Q. During the past five years you have made a specialty of the rates?

A. Well, the past eight years.

Q. Eight years?

A. Yes, sir.

Q. And you are here in this Department as an expert on rates?

A. Yes, sir.

Q. Now, Mr. Davis, do you recall on or about March 27th, last, Messrs. Waterworth and Hess, attorneys-in-fact for certain insurance companies filed a notice in this Department of an increase in insurance rates?

A. Yes, I was aware of that.

[fol. 3058] Q. Mr. Clark was then the Acting Superintendent of this Department, was he?

A. Yes, sir.

Q. Did he direct you to make an investigation with reference to the reasonableness of the application and notice filed by Messrs. Waterworth and Hess?

A. Well, I can hardly say that it was—that I received directions. We discussed the matter and in a way went over different phases that were brought up, together. I was not, in a measure, ordered to procure any certain information.

Q. But did you proceed then as the rate making expert of the Insurance Department to make an investigation?

A. Well, I can't say that I can answer that as a direct question, because I received no specific orders. We discussed——

Q. I am not asking you about orders. I am asking you if you proceeded to make an investigation?

A. No, sir.

Q. You did not?

A. No, sir.

Q. Did you at any time prior to the hearing on this application for an increase make an investigation?

A. Permit me to answer that question in this way: there was no time when I, as an individual, secured certain information which was requested, but from time to time certain features came up and I would look up certain information, and Mr. Clark would look up certain information, and we would discuss that.

Q. Well, you did then from time to time——

A. (Interrupting.) Investigated different features in connection with it; yes, sir.

[fol. 3059] Q. You and Mr. Clark were in conference relative to the reasonableness of the notice then?

A. Yes, sir.

Q. What did you find had been the amount of premiums collected by the fire insurance companies in the State of Missouri for the five year period preceding this application?

General Gose: Wait a minute. I object to the introduction of any evidence in regard to what this witness found was the amount of premiums collected by the fire insurance companies, unless the same was offered in evidence to the head of the department who had to pass upon the question then before the Department of Insurance.

Mr. Leahy: Unless what?

General Gose: Unless the same was regularly offered in evidence and presented to the party who passed upon the application for the increase in rates.

Mr. Leahy: Of course, we will offer in evidence hereafter the records of this Insurance Department in reference to these matters. We desire now to show what investigation this department did make and what they found, and that those are the records.

The Commissioner: Your objection only goes to the fact that it is not shown that it was offered in evidence before the Commissioner of Insurance?

General Gose: Yes.

Judge Revelle: Our position, Your Honor, is, that the matters concerning which he is now being asked are matters of official record in this department, and the objection that it is not brought to the attention of the head of the department does not occur to me as very well taken, because he is the official custodian of all of these records and must take notice of them.

[fol. 3060] General McAllister: Our defendants speak for themselves.

The Commissioner: If you make that objection——

General McAllister: I think it is subject to objection. It is clearly incompetent. If it was not brought to the attention of the head of the department it certainly would be incompetent, and any information furnished this head of the department—this representative of the head of the department would not be competent evidence; it is confidential in its nature; this man is but an arm of the Superintendent of Insurance; in other words, it would not be competent to show advice this expert rate man gave his chief.

Mr. Leahy: We do not desire to show that. We simply desire to show by him that there is a record here showing the amount of the premiums collected in this State by the fire insurance companies during the period of five years, and then we desire to show that that record was before the Acting Superintendent and was a part of the records of this department at that time, when he passed on this matter in April; and then we desire to show by this witness that there is a record here that shows the expenses of these companies during this period, and then the losses of these companies during this period and that the losses, the expenses, and the premiums and amounts of those were before this department at the time this application was made and acted on.

General McAllister: Well, if it is merely for the purpose of identifying records, why that is a different matter.

Judge Revelle: It is not altogether for that purpose. We want to identify these records. We think we have this [fol. 3061] right, to show this—Mr. Davis here is a State official; he is an expert upon the subject that is under investigation; we think we have a right to show by him that, for instance, the expense ratio that these records——

The Commissioner: May I ask you this one question?

Judge Revelle: Yes.

The Commissioner: Would not the records be the best evidence of that? It seems the General's objection did go to that.

Judge Revelle: I think, Your Honor, we have a right to show, for instance, the expenses—that the records here

disclose that these expenses are reasonable. We expect to show that the expenses, together with the losses of this business, exceed the amount of the premiums. Now, we want to also show that the expenses that these records disclose that we have been to are reasonable, and that they represent the average expenses of the average insurance company. I think that Mr. Davis, as an expert, is perfectly competent to testify to that fact, and it is a fact that is competent.

The Commissioner: We have gotten away from the question. Read the question, Mr. Stenographer.

Q. (Read by stenographer.) What did you find had been the amount of premiums collected by the fire insurance companies in the State of Missouri for the five year period preceding this application?

The Commissioner: Now, then, do I understand you to object to that because the record is the best evidence?

General McAllister: Yes, sir; we object to it because the record is the best evidence.

The Commissioner: I think that is very well taken. Unless the record is so voluminous or something of that sort.

[fol. 3062] To which ruling by the Commissioner, the relators, by their counsel, then and there excepted at the time and still except.

Mr. Leahy: In what sort of shape is the record that shows the amount of premiums collected by these fire insurance companies for the five year period preceding March 27, 1918?

A. As far as the premiums and losses are concerned in each volume of the Annual Report of the Commissioner there are certain groups of figures, or rather columns of figures, with totals. It is divided into groups of companies, the companies in Missouri, the mutuals companies, the companies of other states, and companies—foreign branch companies; they have individual totals, and this total combined will give you the total amount of net premium and the total amount of net losses incurred during each of those years. Simply take those records and take the amount as shown in that Annual Report for each year and add it together will give you the total amount for that five year period.

Q. Those then are the records of this Department, these Reports of the Superintendent of the Insurance Department for the five years preceding March 27, 1918?

A. Those are supposed to be the official reports of the Commissioner, based on the annual statements of the companies submitted and filed.

General McAllister: That is a mere compilation of the Reports?

A. Yes, sir; a compilation of the reports.

General McAllister: We insist, if Your Honor please, that the reports themselves are the best evidence.

Judge Revelle: We are going to offer them.

[fol. 3063] The Commissioner: We haven't gotten to that yet.

Judge Revelle: Here is something we do want to show by this witness; we want to go into the matter of what the records disclose as to the expenses of these companies. In fact, my recollection of the records of this department is that for the years 1915 and 1916 and 1917, the records disclose the expenditures of the company, as well as the fire losses, do they not?

A. Yes, sir; they do.

Q. But for the years 1913 and 1914 they do not, do they?

A. No. That is, as far as Missouri business is concerned.

Mr. Leahy: Yes.

Mr. Revelle: We expect to show by this witness that he has made an investigation and that the expenses for the years 1913 and 1914 are relatively and proportionately the same as they are for the years that the records of this department disclose them.

General McAllister: I don't think that would be competent, if the Court please; that would be mere hearsay and a mere conclusion of this witness.

The Commissioner: You are merely verifying the Report of the Commissioner, so I understand?

Mr. Revelle: No, for the years 1913 and 1914, there were no reports.

The Commissioner: Oh, yes.

Mr. Revelle: For the years 1915, 1916 and 1917 there were reports.

The Commissioner: Yes.

Mr. Revelle: Now, we want to show by this witness that he has sufficiently investigated this matter, that he knows that the expenditures and the legitimate expenses for 1913 [fol. 3064] and 1914 are relatively and in percentage about what they are for the years where the records disclose these expenditures.

The Commissioner: Well, ask him the question again, then.

Mr. Leahy: Read the question.

Q. (Read by stenographer.) Those, then, are the records of this Department, these reports of the Superintendent of the Insurance Department for the five years preceding March 27, 1918?

Mr. Leahy: Now, is there a record kept in this department as to the losses sustained in the State of Missouri by the insurance companies five years preceding March 27, 1918?

A. Only those records as compiled in the annual report from the statements of the companies themselves.

Q. Is there a record in this department showing the expenses incident to doing business to which these various insurance companies were put for the five-year period preceding March 27, 1918?

A. Not aggregate figures, but each individual company in their annual statement of their business as transacted would, of course, have items which would show their expenses nationally; that is, where they operate everywhere, in the years 1913 and 1914, 1915, 1916 and 1917, they have computed what their expenses were in Missouri by taking these totals and prorating it for Missouri.

Q. And then for 1915, 1916 and 1917 the report of the Insurance Superintendent does show the expenses to which these companies were put incident to doing business in this state?

A. I think it approximately shows that, I don't know; there has been some question as to whether all the items of expense were included, but we have a special blank that [fol. 3065] is sent to the companies, and the companies, according to the questions in that blank, have given us that information.

Q. Now, then, with reference to the years 1913 and '14 is there contained in the report of the Insurance Superintendent a statement of the expenses of the insurance companies for those two years in the State of Missouri?

A. Not in the aggregate; merely for each individual company, and that is not in the State of Missouri; that is the experience——

Q. That is the experience throughout the United States?

A. Yes, throughout the sections they do business.

Q. Have you got available here the reports of the Insurance Superintendent for the years 1913, 1914, 1915, 1916 and 1917?

A. Yes, sir.

Q. Will you please get those? Now, can you tell approximately how many companies were doing business in the State of Missouri in the year 1913?

A. Year what?

Q. 1913. How many companies?

General McAllister: You have no personal knowledge of that?

A. Nothing, except what is contained in this record; simply to count them, that is all.

General McAllister: We wish to object to that.

The Commissioner: Unless you want the witness to shorten it up by counting the number, of course——

Mr. Leahy: Your Honor, our purpose—now, we are going to show the enormous volume of these records in this department, and that this is a summary, and for the pur- [fol. 3966] pose of the propriety of granting this request for this increase that all the information upon which the Superintendent acted was contained in these reports of the Superintendent.

The Commissioner: Show that and get it in.

General Gose: I would like to make the objection here that I made a moment ago. That we object to the introduction of any evidence in this hearing which was not laid before and presented to the Superintendent of Insurance in the original application. In other words, our contention is, that you cannot mandamus an officer to do a certain thing by reason of new and additional evidence which

is introduced after the time that he refuses to do it, and was not presented to him at the time he refused. In other words, for any of this evidence to be competent it must be shown that it was presented to the Commissioner of Insurance on the original application.

Mr. Revelle: In the first place, the statute provides if we have any right to review the Superintendent's action at all, we have the right to have the matter reviewed de novo, and without any regard to what was offered to the Superintendent; and in the second place, Your Honor, you can see the rather peculiar nature of that objection because there is no provision made at all for a record being kept of what was offered to the Superintendent.

Mr. Leahy: We will show in addition to that, may it please Your Honor, at the original hearing we asked the Superintendent to select a stenographer to take down the evidence, and that the Superintendent consulted somebody and said that we were not entitled to have any record made, but finally we prevailed upon him to permit a record to be made, a copy of which we have and is available. So far as we are permitted we will introduce that record to show [fol. 3067] what testimony was presented at the hearing, but we do not believe under this statute which provides that the hearing shall be de novo that we are restricted to the matters that were presented to the Superintendent.

The Commissioner: I will overrule that.

To which ruling by the Commissioner, the Respondent, by his counsel, then and there excepted at the time and still excepts.

Mr. Leahy: Read the question.

Q. (Read by stenographer.) Now, can you tell approximately how many companies were doing business in the State of Missouri in the year 1913?

The Commissioner: I really think if you are objecting to the witness counting it, I would sustain that objection. In other words, I don't believe the witness has any right to count it if it is there, although it would not be very material, would it, General? If it is in the record I don't know that the witness has the right to read the record.

General Gose: I wouldn't think so.

Mr. Leahy: Do those records there show how many companies were doing business in the State of Missouri—fire insurance business in the State of Missouri in 1913?

A. Yes, there is a list in each volume. There is an official list of companies in each volume.

Q. And there is in each volume, too, a record of the expenses of these companies; that is, for the years 1915, 1916 and 1917, in the State of Missouri?

A. Yes, sir.

Q. Now, have you, as the expert of this department in rating, made an investigation of the reports of this department through its Superintendent for the years 1915, 1916 [fol. 3968] and 1917 to ascertain whether or not the expenses, as shown by these reports, were all things considered, reasonable expenses?

General McAllister: We object, if the Court please; the records themselves are the best evidence of what they show.

The Commissioner: No doubt about that.

General McAllister: No computation would be competent. It is an ultimate fact, whatever it is.

The Commissioner: They, however, are asking a question that if in his investigation upon this, whether or not they are reasonable. They are asking him, as an expert, to give his opinion, as I understand it.

Mr. Leahy: That is it.

The Commissioner: Not as to what the record shows but as to what is his opinion as an expert.

Judge Revelle: And as to the reasonableness of what the record does disclose.

The Commissioner: That question goes to the other.

Judge Revelle: Yes.

The Commissioner: I believe you can go into that on cross-examination. I will overrule that.

To which ruling by the Commissioner, the Respondent, by his counsel, then and there excepted at the time and still excepts.

General McAllister: We renew our objection on the ground that this evidence called for by this question was

not presented to the Commissioner of Insurance at the time this matter was passed on.

The Commissioner: Of course, I do not know whether it was or not. I will overrule the objection.

To which ruling by the Commissioner, the Respondent, by his counsel, then and there excepted at the time and still excepts.

The Witness: I made no such computation. The re- [fol. 3069] ports were before the Acting Superintendent and the Superintendent, and they gained from those reports the information of that nature. I didn't compile it.

Mr. Leahy: No, I didn't ask you that.

A. I was not asked to compile it.

Q. I didn't ask you that. I asked you whether or not the records contained in the Report of the Superintendent of the Insurance Department of this State with reference to the expenses of the insurance companies doing business in this state for the years 1915, 1916 and 1917, were in your opinion as an expert, reasonable expenses?

A. Well, that is a pretty broad question. All that I can say is——

General Gose: Just a moment. I would like to make a further objection to that, if Your Honor please. It calls for the conclusion of the witness, and a conclusion which in order for him to make with any approximate reasonableness would require that he had an intimate knowledge of the items of expense made by these different companies, and knew what they were for and when made, and all the circumstances surrounding it.

The Commissioner: I will overrule that.

To which ruling by the Commissioner, the Respondent, by his counsel, then and there excepted at the time and still excepts.

The Witness: Overrule that?

Mr. Leahy: Yes.

The Commissioner: Read the question. Mr. Stenographer.

Q. (Read by stenographer.) I asked you whether or not the records contained in the Report of the Superintendent of the Insurance Department of this State with reference [fol. 3070] to the expenses of the insurance companies do-

ing business in this state for the years 1915, 1916 and 1917, were, in your opinion as an expert, reasonable expenses?

The Witness: I don't know whether my qualifying as an expert would go that far, because that is a much mooted question in very high authoritative circles, as to what is a reasonable expense for the companies doing business. The only way I can answer that, would be to compare the same expenses as apportioned other states in the Union. There are certain items of expense of the company that are questions under argument now in lots of circles.

Mr. Leahy: Well, your investigation of the reports then of the Superintendent of this Department for the years 1915, 1916 and 1917 show that the expenses of the companies doing business in this State were approximately the same as the expenses of the companies in other states?

A. Yes, sir: I can say that.

Q. What per cent of the premiums were consumed by the expenses as shown by these reports in the years 1915, 1916 and 1917?

General Gose: We object to that; the records themselves are the best evidence.

The Commissioner: I think the records themselves are the best evidence of that.

Mr. Leahy: Yes, Your Honor, the record is the best evidence on that proposition, perhaps. I thought we would expedite time.

The Commissioner: Yes, but then they object to it.

Mr. Leahy: Will you please, Mr. Davis, turn to the Report of the Superintendent of this Department for the year 1913 and show us wherein in that Report he shows the pre-
[fol. 3071] miums collected by the companies in this state?

A. I can refer you to the table. There is a table in here on page 50 of the Annual Report.

Q. Of 19 what?

A. Well, it is the 1914 Report covering the business of 1913. It is under Table 5 and is headed, "Transactions in Missouri in 1913 by insurance companies other than life and compiled from statements on file in the Insurance Department in this State.

Q. Now, that Table 5 is totaled there in the reports that has to do with reference to the premiums collected; is not

that true? I will withdraw that question. Look at Table 5; can you tell us, or have you compiled the sum of the premiums collected in this State?

A. No, sir: I have not.

Q. Do you know whether or not the Reports with reference to the business of the insurance companies other life for 1913, 1914, 1915, 1916 and 1917 were before the Acting Superintendent, Mr. Clark, at the time he passed on the application of Messrs. Waterworth and Hess?

A. They were available; I cannot say they were before him.

Q. Do you not recall that at the hearing these particular Reports of the Superintendent were offered in evidence by counsel for Messrs. Waterworth and Hess?

A. I only recall that it was frequently referred to that certain information could be gathered from the records, and that certain information that was submitted had been gathered.

Q. Do you recall that at the hearing before the Acting [fol. 3072] Superintendent, Mr. Clark, the question as to partial losses was gone into?

A. That was apart, and some of the questions of expenses involving partical losses was made a part of the testimony.

Q. Have you, as an expert figured out what proportion of the losses sustained in Missouri are partial losses?

A. We have no records from which that could be figured.

Q. Don't you know, as an expert insurance man, what proportion of the losses are partial?

A. No, because that could only be told by going into certain records which are available, but they are not records of this department.

Q. Do you recall at the hearing before Mr. Clark there was offered in evidence the affidavits of builders for various parts of this State to show the increase in the cost of materials going into the reconstruction of buildings that have been partially destroyed?

A. Yes, sir: certain affidavits.

Q. Do you recall at that time that Messrs. Waterworth and Hess, through their representatives, suggested to the Superintendent, or Acting Superintendent, that he might, at their expense, secure information with reference to the

increase in the cost of replacement from any source that he so desired?

General McAllister: We object, if the Court please; that is not competent.

Mr. Leahy: The purpose of that, may it please Your Honor, is this; objection has been made here that it would not be proper in this hearing to introduce testimony other than testimony that was presented before Mr. Clark, and our offer now is to show that at that time we suggested to Mr. Clark that he might, at our expense, secure expert [fol. 3073] information in reference to the increase in the cost of replacement from any architect or builder or manufacturer in this State upon whose opinion he would put reliance, and that he did not avail himself of that at all and simply accepted the information that we had.

General McAllister: Well, it is not a question whether he accepted it or not. It is a question of whether it was before him or not. An offer to produce evidence is not a production of the evidence.

The Commissioner: You may say that you told him to do that. I don't see, if he did not go ahead and investigate it, what that would have to do with it.

General McAllister: I don't, either.

To which ruling by the Commissioner, the Relators, by their counsel, then and there excepted at the time and still except.

Mr. Leahy: Do you know whether or not the Acting Superintendent before passing on the application of Messrs. Waterworth and Hess for this increase in rates made any investigation, through you, or otherwise, to ascertain what was the proportion of partial losses in this State?

General Gose: We object to that for the reason that it is immaterial, irrelevant and incompetent as to what the Superintendent of Insurance did to make an independent investigation on his own behalf; that is not a proper matter of evidence whether he did, or not.

Mr. Revelle: That question is more or less preliminary to another one. Before the hearings have ended Your Honor will see the importance of the showing that we ex-

pect to make as to what part of the fire losses in this State are partial losses, and what are complete, or whole losses.

Now, that is a matter that has to be proven by people who know. It is not a matter of record at all. It is pre- [fol. 3074] liminary to asking this witness if he knows what the percentage of partial losses and total losses is. I think we have a right to show that he made an investigation as this application required them to do if they passed upon the matter that we presented to the department.

The Commissioner: Your question is, however, do you know what the Superintendent of Insurance did about making an investigation. That is your question.

Mr. Leahy: Yes. Whether or not you really made an investigation?

General McAllister: This witness has already answered he made no such an investigation.

The Commissioner: And he is asking now what somebody else did.

Mr. Leahy: Well, did you make any on behalf of the Superintendent?

A. I did not.

Q. Well, do you or do you not, as an expert on these matters, know what is the proportion or per cent borne to the total loss of the partial losses in this State?

A. I can't say that I know it as far as this State is concerned. I merely know what it would be as a whole. I have not been in this State long enough to see certain records and discuss it with different people who have been in contact with it for years. I know as a rule.

General McAllister: I object to the general rule.

The witness: That is what I say. I know the general rule. But I know nothing specifically of Missouri.

Mr. Leahy: Will you please state what, as the expert of this department in rating matters, you did actually do at the request of the Acting Superintendent of this depart- [fol. 3075] ment to determine whether or not the application of Messrs. Waterworth and Hess was reasonable and should be granted?

General McAllister: We object. It is wholly immaterial. It doesn't tend to prove any issue in this case.

The Commissioner: He may be able to follow it up probably.

General McAllister: I do not see how it would be material anyway. The Superintendent of Insurance acted on certain information; it doesn't make any difference whether he got it from Davis or where he got it. That is wholly immaterial. I think it is just as immaterial as to try to ascertain from a certain Judge what law book he read in trying to pass on the law of his case.

The Commissioner: But you contend he must have had this before him at the time his decision was made, do you not?

General McAllister: Yes, but they are not asking about what was before the Commissioner.

The Commissioner: I thought that is what they were getting at.

General McAllister: No, they are wanting to know what request the Commissioner made of this witness to make investigations, which certainly was not the duty of the Commissioner.

The Commissioner: Of course, that standing alone might not be competent, unless he will follow it up.

Mr. Leahy: Very well, we will withdraw it. You have designated Table 5 in the Report with reference to the business of 1913 as showing the premiums collected. What table in the Report with reference to the business of 1913 shows the amount of losses sustained in this State?

[fol. 3076] A. The same table.

Q. The same table?

A. Yes, sir.

Q. Now, in the Report of 1913 I believe you have testified that there is no table which shows the expenses incident to doing business in the State of Missouri?

A. There is no table.

Q. Will you please look at the Report with reference to the business of 1914 and state what table shows the amount of premiums collected and the amount of losses sustained? Give the page and table?

A. Page 39, Table 4.

Q. You are now reading from the Report of the Superintendent of Insurance for what year?

A. 1915, covering the 1914 business.

Q. 1915, covering the business of 1914?

A. Yes, sir.

Q. Is there any report or table in the Report of the Su-

perintendent for the—covering the 1914 business which shows the expenses incident to the doing of business in this State?

A. No, sir.

Q. I ask you to look then at the Report of the Superintendent of Insurance with reference to the business done in this State for the year 1915 and give the page and table which shows the premiums and losses?

A. Page 41, Table 4 of 1916 Report, covering the 1915 business is the same as that given for the previous two years, with the exception of a note showing an error, which says, "Blank was changed to gain needed information under the Rating Act. Information in column, "Net risks [fol. 3077] written," is misleading without further understanding. See Table 4a, page 46a for risks written."

Q. Both of those tables show the amount of losses sustained in this State paid by them?

A. Yes, sir.

Q. Now, will you look with reference to the business done in this State for the year 1915 and give us the page and the Report of the Superintendent, and the table that contains the figures?

A. That is for the 1916 business?

Q. Yes. Oh, just withdraw that question. That Report of 1916 of the Superintendent of this Department for the year 1915 shows the expenses incident to doing the business in this State for that year, does it not?

A. Yes, sir.

Q. What were the expenses?

A. There is a sheet inserted between pages 52 and 53 headed, "Recapitulation of underwriting experience by classes," which is the first sheet of this kind published after the Rating Act was passed, in compliance with the law, and that sheet is self-explanatory. It has the totals and various items of expense.

Q. What is the total expense?

General McAllister: Well, now read it yourself, unless you are just inquiring for your own personal information. It is not competent evidence.

Mr. Leahy: It speaks for itself, of course, but it will aid the Commissioner greatly.

The Commissioner: If they object to it, of course, I cannot let him answer.

To which ruling by the Commissioner, the Relators, by their counsel, then and there excepted at the time and still except.

[fol. 3078] Mr. Leahy: Well, look at the Report with reference to the business of 1916; give us the page and table which shows the premiums collected and losses sustained, and the expenses incident to the doing of business in this State?

A. In the Report of 1917, covering the 1916 business, page 41, Table 4.

Q. That shows the premiums and losses?

A. That shows the premiums and losses and net; yes, sir.

Q. What table shows the expenses?

A. Page 100 and 101.

Q. Have you a report here with reference to the business done in this State in the year 1917?

A. We have what is known as "Advance Sheets," which will contain the total for net premiums and losses, but it doesn't yet contain the underwriting experience by classes, which is now in the printer's hands.

Q. What table shows the premiums collected and losses sustained for the year 1917? The page and table?

A. Page 39 of the 1918 Report, Table 4.

Q. Now, is there any table there showing the expenses incident to doing business in this State?

A. Not in the "Advance Sheets." That has been prepared and is now in the printer's hands. I do not know what number the page will be, but the information has been compiled.

Q. Have you a copy of it here?

A. There is——

Q. In this Department of Insurance?

A. Yes, sir; there is a copy in the Department.

Q. Will you please secure that for us?

A. Yes, sir.

Mr. Leahy: Now, may it please Your Honor, we offer in [fol. 3079] evidence the various tables and pages in these Reports of the Superintendent which have been identified by this witness with reference to the business done by the insurance companies, the losses sustained for the years 1913 and 1914, and with reference to the premiums collected, losses sustained, and expenses of the companies for the years 1915, 1916, and 1917.

General Gose: We object to the introduction of these, unless they show that they were introduced in evidence before the Commissioner at the former hearing on the original application.

Judge Revelle: These are the Official Reports of the Commissioner of Insurance.

The Commissioner: I will overrule that objection.

To which ruling by the Commissioner, the Respondent, by his counsel, then and there excepted at the time and still excepts.

Mr. Leahy: And we ask that the stenographer mark the Report with reference to the 1913 business as Exhibit 7; and with reference to the 1914 business as Exhibit 8; with reference to the 1915 business Exhibit 9; with reference to the 1916 business Exhibit 10; and with reference to the 1917 business as Exhibit 11.

(Said Official Reports of the Superintendent of Insurance, by agreement of counsel, were not defaced by being marked as exhibits.)

Mr. Leahy: That is all.

General McAllister: Well, we better take an adjournment. I have some business on hand and I would like to suspend until two o'clock this afternoon if you gentlemen will indulge me.

Judge Revelle: That is all right. It is twenty five after twelve now.

The Commissioner: Adjourn then until two o'clock.

It is hereby stipulated and agreed by and between coun- [fol. 3080] sel for relators and for respondent that the above exhibits 7, 8, 9, 10 and 11 shall not be copied into the bill of exceptions because all facts material and relevant to this case shown in said exhibits 7, 8, 9, 10 and 11 are elsewhere shown in this bill of exceptions, and it is further agreed and stipulated with reference to said above exhibits, 7, 8, 9, 10 and 11 and tables 1, 2, 3 and 4, referred to on page 402 of this bill of exceptions, concerning which a stipulation has also been entered, that, should occasion require, the court or counsel may refer to and use the official published reports of the Insurance Department for the years 1912, 1913, 1914, 1915, 1916 and 1917 with the same force

and effect with reference to said exhibits and tables as if the same were actually copied into this bill of exceptions.

John S. Leahy, Chas. G. Revelle, Counsel for Relators. Frank W. McAllister, Attorney-General; John T. Gose, Assistant Attorney-General, Counsel for Respondent.

Thereafter, at 2:00 o'clock p. m., on the same day, and at the same place, pursuant to the foregoing recess for the noon hour, said hearing was resumed and the further taking of testimony follows, as to-wit:

James A. Waterworth, of lawful age, one of the Relators, produced as a witness on his own behalf, as well as on behalf of the other Relator, being first duly sworn, upon examination testified as follows, to-wit:

[fol. 3081] Direct Examination by Judge Revelle:

General Gose: It is to be understood we can recall Mr. Davis and Mr. Clark at any time we want to?

Judge Revelle: Yes. State your name, please?

A. James A. Waterworth.

Q. You are one of the Relators I believe, one of the plaintiffs in this case?

A. Yes, sir.

Q. What is your business, Colonel?

A. The making of insurance rates for Missouri.

Q. Judge, I guess there is no question about the correctness of the names of the companies that this bureau represents?

General Gose: I have raised no question about that, no.

Judge Revelle: I don't care to take up all the time asking about those companies.

General Gose: No.

Judge Revelle: Colonel, you and Mr. Hess are the Relators in this case and the attorneys in fact for the various insurance companies whose names are mentioned in your petition, are you?

A. Yes, sir.

Q. How long have you been engaged in the rate making work?

A. About thirty-seven years.

Q. And how much of that time have you been in Missouri?

A. All of that time.

Q. Prior to 1915 in what capacity were you connected with the insurance companies?

A. Well, from 1911 to 1915 I was connected with them in the same capacity practically as today; that is, I was a [fol. 3082] member of the committee to make rates for the State of Missouri. Prior to that time I was in the independent.

Q. That is, you were an independent ratemaker?

A. Yes, sir.

Q. Prior to 1911?

A. Yes.

Q. As I understand it, you took up the experience of the companies and promulgated the rates and sold those to the companies prior to 1911?

A. 1911 in the City of St. Louis and St. Louis County.

Q. Since that time you have been in the direct service of the companies?

A. Yes, sir.

Q. Making rates for them?

A. Yes, sir.

Q. And that has been practically true since the enactment of the Rating Act in 1915?

A. Yes, sir; that is true.

Q. Now, Colonel Waterworth, will you explain to the Commissioner just the system that you adopt in making rates with reference to this, the percentage of the premium income that you figure for expenses, and the percentage that you figure for losses, etc. In other words, go as fully into your system of determining what is a reasonable rate as you can.

General Gose: Now, just a moment, please. Let it be understood our objection to all this testimony coming in before the Commissioner, the objection we made before is taken as to each witness and all his testimony, without repeating the objection.

Mr. Leahy: Yes, that general objection.

The Commissioner: Yes, that objection can go.

The Witness: The rates are based on a schedule filed [fol. 3083] with the Department and approved by them, and that schedule is adjusted to the conditions found to exist in Missouri. Now, since that schedule was adopted the conditions in Missouri have become very much worse than they were at the time that schedule was applied. In other words, the burning loss, burning rate of Missouri has been much higher than it was for some years prior to that time. We have not been able to readjust that schedule to the increased fire losses or hazards of Missouri since 1915—1911, in fact.

Judge Revelle: Well, now, Colonel, in speaking of the schedule which you filed, what schedule do you mean? When was that schedule filed?

A. That schedule was filed originally in 1911.

Q. Well, now, in 1915 after this new Rating Act was passed did you file a different schedule of rates?

A. No, sir; the same schedule was continued in use.

Q. Do I understand then that the schedule which you filed in 1915 was the same schedule of rates, both specific and general basis rates, as you had offered to file in 1911?

A. Yes. There have been changes in many of the minor provisions of the schedule but the basis remains the same, except that last September there was a slight alteration made in the basis of property subject to term insurance.

Q. Now, what do you mean by "term" insurance?

A. Insurance for a period longer than one year.

Q. Has there been any change made in the general schedules other than changes than that of specific, hazards since 1911, except the change that was made in October on account of the change in the term rule?

[fol. 3084] A. Yes; that is, as to the general provisions of the schedule.

Q. I say has there been any change made?

A. No.

Q. Since 1911?

A. No.

Q. Now, will you explain to the Commissioner just how you go about making a rate?

A. The rate is based upon a minute survey of the property that is to be rated; a minute survey of all its parts.

Q. Now, who makes that survey?

A. Our inspectors which we have employed.

Q. You send inspectors out to inspect the specific risk, do you?

A. The specific risk on which the schedule is applied.

Q. And they make a report to you?

A. They report to us.

Q. All right. Now, proceed.

A. Allow me to say that that doesn't apply, that specific inspection by us doesn't apply to dwellings, only to farm property.

Q. You have a flat rate on those two classes?

A. Yes, sir; there is a flat rate and some other minor classes.

Q. Now, just proceed as to the classes of property where you haven't a flat rate, as to how you make up the rate?

A. The building is inspected. First of all, there is a basis established by the height of the building. Then the building is inspected and measured for its area, for the thickness and construction and adequacy of its walls, for openings in floors, which are an element of hazard in hav-[fol. 3085] ing a fire from one floor to another and destroying a building very speedily.

Q. You mean by openings—stairways?

A. Stairways.

Q. And different holes?

A. And elevator hatches or any other opening coming in the floors. Then we take into account the construction of the building, if ordinary or slow burning. We take into account the mode in which it is lighted. We take into account the exposures of surrounding buildings within sixty feet, all of which exposures are measured by specific rules. And we take into account any special features of the management of the risk; the condition in which it is found as to cleanliness, freedom from rubbish and freedom from the presence of substances that would tend to originate a fire in the premises. That, in general, is the method.

Q. Now, from the consideration of the things that you have mentioned you fix the basis rate?

A. Fix the rate in toto; that fixes the rate on the premises.

Q. Now, will you explain the difference in the basis rate and the specific rate?

A. The basis rate is what you might call a nucleus rate with which we start.

Q. Now, just explain to the Commissioner what you take into consideration in fixing the basis rate?

A. Well, we begin with the protection of the town.

General Gose: I didn't catch that, Colonel.

The Witness: We begin with the protection of the town. The towns are classified with regard to their fire protection. Towns of the first-class, one and a half; second-class, two and one-half; third-class, three and one-half; fourth class, [fol. 3086] four and one-half classes, and so on down to the sixty class, and the basis—the first charge is determined by the classification of the town according to its fire protection; that is, the facilities which the community itself has provided for the extinguishing of fire.

Judge Revelle: Well, now, does the element that you mention that enters into a determination of the basis rate enter into that?

A. The fire protection, the amount of insurance, proportion of insurance, the value actually has entered into that. The experience of the State for years has entered into that—supposed to enter into that.

Q. Well, now, Colonel, in determining the basis rate or the class in which a town should be placed, you have to send out inspectors and examiners to ascertain the general fire condition of that town, do you not?

A. Yes, sir.

Q. That expense is borne directly by you?

A. Yes.

Q. And in the end paid by the insurance companies?

A. This inspection of the cities, villages and towns of the State has been made by engineers expressly qualified for that purpose, and we have them on record of the classification of the towns.

Q. These engineers or inspectors are licensed, I believe, by the Insurance Department, are they?

A. Yes, sir; yes, sir.

Q. After you have arrived at a basis rate then do you have to make an inspection of the specific risk in order to determine the ultimate rate?

A. In all the details which I have already mentioned, the height of the building and number of stories, area, construc-

tion and adequacy of the walls, openings in the floors, the mode in which it is lighted, the exposures, and if there is [fol. 3087] anything special about the construction, about the minor conditions, such as careless use of coal oil, or the improper wiring for electrical purposes, and matters of that kind.

Q. Well, now, you first make this inspection for the purpose of determining the basis rate?

A. Yes, the basis rate.

Q. Of a town? And then you make a specific inspection of each risk in that town after that town has been given a classification, do you not?

A. Yes, sir.

Q. And to the basis rate, as I understand it, you will add a certain charge for this hazard, and that hazard, and the other hazard?

A. That is true.

Q. For instance, if there is defective wiring you add a certain charge for that?

A. Yes.

Q. If there is a hole in the floor you make a charge for that? If there is rubbish around the place you make a charge for that?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir: a specific charge.

Q. And then the total of these specific charges for each hazard added to the basis rate constitutes the——

A. (Interrupting.) The rate.

Q. —the ultimate rate?

A. Constitutes the ultimate rate.

Q. And in order to fix the rate on any risk in the State you have to make these personal inspections of that risk?

A. Yes, sir.

Q. Well, now, Colonel, about what ratio to the premium [fol. 3088] income does the cost of these inspections make up the ultimate rate on a risk?

A. One and a quarter per cent, approximately.

Q. You say that amounts in the aggregate——

A. One, forty.

Q. One and forty hundredths?

A. Yes.

Q. That is, of the gross premium income?

A. I believe it is the net premium income.

Q. The net premium income?

A. Yes.

Q. Now, are you familiar with the amount of taxes that the companies pay to the State government?

A. Yes.

Q. And the municipal governments and the Federal Government?

A. Yes.

Q. Do you take those elements into consideration in also fixing a rate?

A. They have been taken into consideration all but the new—the new elements have not yet—have not been brought into the rating. For instance, the Federal Government has put on a tax of six per cent on the income of the companies, which has not yet got any place in the rating of anything in Missouri.

Q. Now, Colonel, prior to say a year ago, what taxes did you take into consideration in fixing a rate that you were then charging?

A. There was an established tax when we filed—when we filed our schedules there was an established tax on the gross premiums—gross—on the State of *of* Missouri of two per cent, which went to the State treasurer. Then municipalities have a rate or a right to levy taxes, to levy li- [fol. 3089] cense taxes on the companies for doing business, and I apprehend that those taxes will run very near an average of one and a half per cent.

Q. Now, Colonel, do you know from your investigations and your experiences in making rates that one and one-half per cent is a fair estimate of what those municipal taxes amounted to—have amounted to prior to a year ago?

A. Yes, I presume that that would be—one and one-half to two per cent would cover it.

Q. Well, which would you say, one and one-half or two?

A. Well, the last estimate I made was about 3.73.

Q. I am asking you now prior to a year ago what those municipal taxes amounted to?

A. I should say strictly municipal would have amounted to about one and one-half.

Q. One and one-half?

A. Yes.

Q. And then there is the premium tax of two per cent that goes to the State?

A. Yes, sir.

Q. That made three and one-half?

A. Yes.

Q. Now, in the last year have you made an estimate of what the increased taxes on the business in this state amounted to in comparison to the premium income?

A. I should say that the taxes which I would have estimated as about 3.73, 4 or 5, or somewhere along there. Now, the Federal taxes have been imposed to the amount in the neighborhood of ten per cent or eleven per cent. They have not fully appeared in the returns yet.

Q. Well, I am not asking about that. Do you know what they are?

[fol. 3090] A. Yes, sir.

Q. And is it your statement that the taxes now, including the municipal, State and Federal, will hereafter amount to about ten per cent of the premium income?

A. I would say even more than that.

Q. Well, how much more?

A. I would say twelve per cent.

Q. Twelve per cent?

A. Yes.

Q. That is an increase in the last twelve months of at least eight per cent, is it not?

A. Yes, sir.

Q. Colonel, what proportion of the fire losses in this State are the partial losses?

A. In point of number?

Q. No, I mean in value?

A. In value? I would say the total losses are thirty per cent and the partial losses seventy.

Q. Now, in number what are they?

A. Well, in number the total losses do not exceed nine per cent and the partial losses would be ninety per cent.

Q. Ninety?

A. Yes.

Q. You would say that in value the partial losses in this State amounted to about seventy per cent?

A. Yes, sir.

Q. Would you say that that is an average year in and year out—the partial losses?

A. Yes, sir, I would say that that was covering the average, yes, sir.

Q. As I understand it, when any losses occur, at least at a certain period of the year, the losses are reported by the companies to your bureau?

[fol. 3691] A. Yes, when we—we have various ways of ascertaining the losses.

Q. Well, they are reported?

A. Whenever we call for them they are reported.

Q. How often do you call for them?

A. Well, we called for the first four months of this year, for instance, up to April 1st. We have not called since.

Q. Now, do you know what the premium income of the companies the first four months of this year amounted to?

A. No, I can't say that I do, although I think that I could give that information.

Q. You do not now know that? Now, Colonel, I will get you to state what the losses in this State for the first four months of this year amounted to?

A. I should say they amounted to a hundred per cent of the premium.

Q. You mean a hundred per cent of the premium?

A. Yes, the entire premium; they exhausted that.

Q. How much in dollars and cents does that represent of the first four months in this year?

A. I should say it would amount to about $3,000,000.00.

Q. Three millions?

A. Yes, sir.

Q. Well, now, Colonel, you recall a fire at Kansas City, do you not?

A. Yes, sir.

Q. Wasn't that about a two million loss?

A. About two million, yes.

Q. Now, that occurred the first four months of the year, didn't it?

A. It did.

Q. To refresh your memory, I will ask you if your esti-
[fol. 3692] mate of three million for the first four months wasn't outside of that two million loss at Kansas City, and

if the losses did not amount to about five million the first four months?

A. My impression is that it was either at the end of or immediately following one of the large fires occurred—probably it is correct that that fire was not included in my three million; yes.

Q. Since that time there have been some very big losses in this State?

A. Very; very.

Q. Been some in St. Louis?

A. Some in St. Louis; yes.

Q. Do you know how the losses up to this time in this State have compared with the losses of last year and the preceding year?

A. Up to this time they are much larger.

Q. Well, what relative increase in percentage would you say?

A. Well, we—we estimate that the losses of the first four or four and one-half months of this year would be fairly equivalent to what you might call almost a year's loss.

Q. I want you to give your best estimate and judgment of what the losses in this State have amounted to for this year up to the present time?

A. Why, between five and six millions; about six millions I would suppose, and that is an entire average year's loss.

Q. Colonel, I will ask you to give your definition of a "conflagration?"

A. Well, it is differently defined. It is, to begin with, it is a loss which—a fire which spreads from a place in which it originates; that is the first condition in my mind, and brings in other buildings than the one in which it {fol. 3093} originated. Then it must bear an abnormal proportion to the amount of that risk in the district in which it occurs. I think those two elements enter into it. Probably it may be—have specific relation to the total fire experience.

Q. I will ask you if it is not a fact that a conflagration is something that the fire insurance people must deal with, but yet something that is not based upon the general law of percentages or averages in the business, and something

that is not taken into consideration in fixing the regular rate?

A. It must transcend the ordinary law of fire losses.

Q. It is something that is not contemplated?

A. No.

Q. At the time that the regular rate on risks is made; is that true?

A. It is not contemplated.

Q. I will ask you, Colonel, what in the insurance world, among insurance people, is regarded as a reasonable, necessary amount to take care of the conflagration hazard?

A. Well, I will say that over and above ordinary provisions it is about—there ought to be five per cent of the premiums put away for that purpose.

Q. Five per cent of the premium income?

A. Premium income.

Q. As figuring that there will be a conflagration probably once in eighteen or twenty years?

A. Yes; yes.

Q. I will ask you to state what the conflagration in San Francisco amounted to?

A. The total amounted to over two hundred million; that [fol. 3994] is, that the insurance companies were interested in; amounted to about two hundred and thirty millions.

Q. Will you mention the different conflagrations that we have had in the United States in the last forty years?

A. Well, of course, the biggest conflagration in proportion to the business was Chicago.

Q. Give them in the order of time?

A. Chicago was the first in my time, and that was in 1871. That was followed—that was the very great conflagration.

Q. What was the loss in that conflagration?

A. The loss was about a hundred and ninety millions of dollars of property, but it was an insurance loss of somewhere in the neighborhood of a hundred millions of dollars.

Q. You mean only one hundred and ninety million—only a hundred million of the one hundred and ninety million destroyed was covered by insurance?

A. Was covered by insurance.

Q. Now, do you know what the amount of the capital that was employed in the fire insurance business was at that time; that is, companies engaged in business in Chicago?

A. I don't think the capital was then over fifty millions.

Q. Fifty millions?

A. Yes.

Q. That conflagration then resulted in a loss to the fire insurance companies of about at least twice the amount of capital employed in the business?

A. I think it did.

Q. At the time?

A. There were sixty-eight companies totally destroyed.

[fol. 3095] Q. Now, what is the next fire that has been regarded in the insurance world as a conflagration?

A. Boston, the year afterwards.

Q. That was seventy-five——

A. Seventy-five millions of dollars.

Q. That was what year?

A. 1872.

Q. And seventy-five million?

A. Yes, sir.

Q. And would you say that the capital employed in the business at that time was about the same as it was in 1871?

A. No, they hadn't been able to reinstate the capital employed in the business when the Boston fire occurred. There were twenty-eight more companies wiped out there.

Q. That company resulted in the impairment—that conflagration resulted in the impairment and destruction of about twenty-eight companies?

A. Yes, it was felt that the insurance capital at that time was almost wiped out.

Q. Now, what was the next one—well, do you know what means they adopted of replacing that capital?

A. Stockholders put it up.

Q. You mean the stockholders voluntarily contributed?

A. Oh, yes, voluntarily contributed to strengthen the companies that remained.

Q. Do you know how much was contributed in that manner by the stockholders on account of the Boston conflagration?

A. I can't tell you the total amount, but it ranged in sums from a million and a half, such as the company was supposed to put up——

[fol. 3096] Q. I mean the aggregate?

A. I can't tell you.

Q. As much as forty or fifty millions of dollars?

A. No, there was not that much contributed at that time.

Q. Well, give us approximately, Colonel, your best idea of it?

A. The contribution that was made was to strengthen the companies which were left. There were a hundred companies obliterated, so there was nothing to be put up on their behalf. Now, the companies which remained, which were not numerous, each attended to creating a reserve they considered sufficient for themselves and proceeded on. There were several companies that came out of the fire. One company sent its check for its own three million loss in Chicago and didn't take any further steps to strengthen itself; it had enough.

Q. I will ask you, Colonel, if on both of those occasions it is not true that the losses of the companies were so heavy that a great many of the policy-holders were unable to collect their insurance, or at least a portion of it?

A. Oh, yes; yes; a great many of those; for instance, those one hundred companies—those seventy odd companies that failed, the policy-holders got from nothing up to twenty-five cents on the dollar.

Q. Now, what was the next conflagration in the history of this country.

A. The rates had to be raised on the demand of the people of the country. That was the only measure of reinstatement.

Q. I say what was the next conflagration?

A. Baltimore was the next important one.

Q. When was that?

[fol. 3097] A. That was about twenty years ago—hardly twenty.

Q. Do you know what the loss amounted to there?

A. Forty millions.

Q. And did that result also in the impairment and retirement of a number of companies?

A. No, no, they were able to handle that, but it simply struck that much off their surplus.

Q. And what was the next one?

A. Well, there have been conflagrations of ten millions in Jacksonville, Florida; seven or eight millions in Rochester, New York; fourteen millions in Toronto, Canada; recently, within a year or two, five millions in Atlanta, Georgia; five millions in Paris, Texas; and San Francisco, which destroyed two hundred and thirty-five millions of insurance capital.

Q. Now, in these conflagrations or hazards with the regular rate you have fixed for this State have not been contemplated?

A. No, never contemplated.

Q. And you state, as an insurance man, that five per cent of the premium income is regardel as essential to lay up as a conflagration fund?

A. Yes; yes.

Q. In order to enable the company to meet those extraordinary liabilities?

A. Yes. Losses now have to be paid from surplus from the funds, which takes in conflagrations.

Q. Are you familiar with the present cost of building material and labor as compared with the cost of it, say a year or a year and a half ago?

A. I know that it is forty or fifty—forty per cent at least higher.

[fol. 3698] Q. Now, are you speaking of labor or building material?

A. Every element that enters into building has increased from twenty to forty or fifty per cent, some of it much higher, some of the elements much higher, but I was considering that it made the forty per cent. It is more than that now. It is increasing—it is increasing daily. What I would say three months ago would not be adequate today, but it is not less than forty, probably fifty per cent higher.

Q. You mean on the average?

A. Yes, sir.

Q. Colonel, what is the average fire insurance rate in this state?

A. The average last year was ninety-three cents.

Q. Ninety-three? What do you mean by that?

A. I mean that every hundred dollars of insurance bought—purchased—cost on the average—on the average ninety-three cents.

Q. Are you familiar with the insurance rates in other States?

A. To a certain extent, yes, sir.

Q. I will ask you to state whether or not the rate that the Insurance Department is now permitting the companies to charge in this State, whether it is not lower than the rate as charged in any other State in the Union?

A. No, it is lower than any of the surrounding Western States. I think probably the average—the average in New York may be a little less.

Q. That is on account of the splendid fire protection?

A. Yes.

Q. In the many ways they have?

A. The conditions and fire protection.

[fol. 3559] Q. Is there any State situated similarly to Missouri that has anything like the rate that this State has?

A. No, sir.

Q. What is the rate in Illinois?

A. I think the average rate in Illinois is about $1.14.

Q. Will you mention the rate in other surrounding States?

A. Well, I would hardly charge my memory——

Q. What is Iowa; do you know?

A. Iowa is about $1.10—$1.08, or $1.10.

Q. To refresh your recollection, isn't it $1.15.

A. $1.15, yes.

Q. What is Oklahoma?

A. Oklahoma is higher than that.

Q. Higher than that?

A. Yes; yes.

Q. What about Kansas?

A. Kansas is higher.

Q. That is true. Do you remember the rate in Arkansas?

A. Well, I should say the rate in Arkansas is fifty per cent higher than the rate in Missouri.

Q. Isn't their rate about $1.59?

A. Somewhere like that; yes, sir.

Q. In Arkansas?

A. Yes, sir; fifty per cent higher than ours.

Q. And you say now, Colonel, that the rates in this State have not been increased, except as they have been adjusted

on account of the term rule in October of last year, that they have not been increased since 1911?

A. No except by changes.

Q. The specific charges made on account of specific hazards?

[fol. 3100] A. No, sir.

Q. But there has been no flat increase, or there has been no increase in the basis rate, or any general increase in rates in this State since 1911?

A. No; I believe they are lower.

Q. Well, Colonel, taking the average rate in this State, I believe you stated there had been some changes made on account of the hazard in each particular risk, what has been the general course of rates in this State for the last four or five years?

A. The average course has been downward.

Q. Well, now, explain to the Commissioner just what you mean by that, and how that has occurred?

A. The average rate in Missouri in 1911 was, as near as I can recall, about $1.11, and it has gone steadily down from that until the average rate now is ninety-three cents. Now, that has been accomplished first of all by the schedule rating which we applied in 1911, was admitted in 1912, and which has secured improvements in the construction of buildings, in the care taken of buildings, and also in the fact that the use of the co-insurance clause has obtained for us a larger amount of insurance on the property in proportion.

Q. Well, it has followed a betterment of the physical properties and a more extensive use of the co-insurance clause?

A. Undoubtedly; undoubtedly.

Q. I will ask you, Colonel, if in 1911—the schedule which you prepared in 1911 was not a decrease in the rates prior even to that time?

A. The rates that prevailed prior to that time?

Q. No, I mean the regular schedule rates prior to that time? I do not mean the rate that was charged by one [fol. 3101] fellow or the other, as the result of competition, but I mean the rates that you fixed in 1911 under, I believe, the Oliver law?

A. Yes, sir.

Q. If it was not a reduction in the general schedule of rates that prevailed in this State before?

A. Well, I—up to that time I dealt only with St. Louis and St. Louis county, and it was a sharp reduction in the greater number from the—it was a sharp reduction in a great variety of the hazards, of the risks in St. Louis county.

Q. In general and in the end?

A. And in general it was a reduction.

Q. Do you know what the average commission that the insurance agents in this State receive is; that is, what proportion of the premium income?

A. About twenty-two and one-half per cent.

Q. Twenty-two and one-half per cent?

A. Yes, sir.

Q. Now, do you know the other relative proportion of the premium income that the companies have to expend in the operation of their business?

A. Well, they have to expend, for instance, two per cent to maintain the salvage corps of the city of St. Louis. I believe they expend the same amount to maintain the salvage corps of Kansas City, but they don't attend to the salvage corps in Kansas City.

Q. Now, just explain more generally what you mean by "the salvage corps?"

A. The salvage corps is an organization—is a fire extinguishing and property-saving association of men and machinery for saving goods at fires. It is equipped with a fine corps of men and wagons, most of them auto-driven wagons, and hooks and ladders, portable fire extinguishing apparatus, chemical engines drawn by—moved by elec-
[fol. 3102] tricity, moved by auto, and covers for covering goods in burning buildings to prevent them being injured by water and smoke and fire.

Q. As I understand it, it is both a fire fighting and a property-preserving department?

A. It is, yes. It is an auxiliary work of the working of the fire department, plus the protection of the property that is jeopardized.

Q. And what percentage of the premium income does the cost of the maintenance of that department represent?

A. Two per cent.

Q. Now, that accounts for 24½ per cent of the premium income, and I understood you to say awhile ago that up until about a year ago that the taxes amounted to about four per cent?

A. Yes, sir.

Q. And now to about twelve?

A. Now they are about twelve: that is, Federal, and State, and municipal.

Q. And then up until about a year ago that accounts for 28½ per cent, now for 36½ per cent of the premium income? Now, what other expense is there?

A. Well, for the Missouri business there is an expense of approximately five per cent for maintaining the supervision of the business in Missouri, adjusting losses, keeping track of the accounts of agents; it is the work of what we call the "special agent."

Q. You mean that amounts to five per cent of the premium income?

A. Yes, sir; of maintaining complete supervision over the business in Missouri very closely.

[fol. 3103] Q. And then the rate making department represents what per cent?

A. $1.40 on the fire.

Q. And then do you know what the Home Office or overhead expenses—what relation that bears to the total premium income?

A. About eight per cent; I think it is about eight per cent.

Q. About eight per cent?

A. Yes.

Q. Now, let's see——

General Gose: How much, Colonel?

A. About eight per cent.

Judge Revelle: 22½ commission; practically 4, taxes under the old law——

A. Yes, sir.

Q. —12 under the present law?

A. Yes.

Q. Then about five per cent for inspection?

A. Yes, sir.

Q. Special agents, etc.?

A. Yes, sir.

Q. And then you have one and four-tenths for rate making?

A. Yes.

Q. And then about eight per cent for Home Office expenses?

A. Yes, sir.

Q. Now, are there any other expenses?

A. Yes, there is an expense which does not appear in the accounts at all, it is absorbed. The entire field force of Missouri is today engaged in making special—taking special protecting measures for the Federal Government on classes of risks that are of absolute need to the Government, such [fol. 3104] as flour mills, grain warehouses and elevators and factories—all factories where supplies for the Government, or machinery and munitions, or other matters, are manufactured or stored.

Q. Well, now, that is an expense that has come directly as the result of the war?

A. Yes, sir. We pay all their traveling expenses and there is no charge to the Government.

Q. That is all done at the expense of the insurance companies?

A. Yes, the companies do that.

Q. Has there been any increase in the last year and a half in these percentages that you have given because of the increase in the cost of traveling?

A. None whatever.

Q. Well, I mean has the cost of traveling, and the cost of printing, telegraphing, telephoning, and so on, has that increased in the last year?

A. Oh, yes.

Q. And year and a half?

A. Oh, yes, that has increased I suppose about fifty per cent.

Q. About fifty per cent?

A. Yes, sir.

Q. What proportion or relation does that bear—that increase bear to the total premium income in this State?

A. That fifty per cent you mean?

Q. I mean that increase in the cost of traveling, telegraphing, the cost of the increase?

A. I think it is six per cent.

Q. Over and above what it was, say a year ago?

A. Yes, sir. The replacement bills of contents—we speak of the replacing of the cost of buildings—the replacement of the cost of contents of buildings are very much higher [fol. 3105] than the replacement of the cost of the buildings——

Q. (Interrupting.) Well, that goes to the loss ratio?

A. Yes.

Q. I am speaking now merely of the expense ratio.

A. Yes.

Q. Yell, now, Colonel, do you know what the losses paid by the companies in this State for the year 1913 amounted to as compared with their premium income; what the percentage was?

A. About seventy-eight per cent.

Q. Seventy-eight per cent of the premium income?

A. Yes, sir.

Q. That left twenty-two per cent to pay these various items of expense that you have mentioned?

A. Yes, sir.

Q. Which aggregated I believe forty-five to forty-eight per cent?

A. Yes, sir.

Q. Do you know what the ratio in 1914 was?

A. It was sixty-seven and one-half per cent.

Q. Sixty-seven and one-half? Now, the expense ratio that year was about what?

A. I should say it was about forty-two per cent.

Q. Forty-two per cent?

A. Yes, sir.

Q. Now, how about the year 1915; what was the loss ratio?

A. The loss ratio was about sixty-seven per cent net.

Q. And what was the expense ratio that year?

[fol. 3106] A. I should say it was forty to forty-two per cent; it fluctuates.

Q. Forty to forty-two per cent?

A. Yes, sir.

Q. And then for 1916 what was the loss ratio?

A. That dropped to between fifty-four and fifty-five.

Q. And what was the expense ratio that year?

A. I think it was about the same, forty to forty-two per cent.

Q. Forty to forty-two?

A. Forty-two; yes.

Q. And then what was the loss ratio in 1917?

A. Nearly sixty—fifty-nine something; about sixty per cent.

Q. And the loss—and the expense ratio particularly for the latter part of 1917 materially increased over the preceding years, did it not?

A. Yes, it increased.

Q. What would you say that loss ratio was for the whole of 1917?

A. Well, I should say it was about——

Q. I mean the expense ratio?

A. The expense ratio did not show the increase that the constituent items would lead you to suspect, by reason of the fact that the premium income increased at a jump about—about thirty-three and one-third per cent—hardly that much—twenty-five per cent.

Q. What was the expense ratio as compared with that enormous premium income?

A. Forty per cent.

Q. Now, that business that was written in 1917 where there was a great increase in both the premium income and [fol. 3107] in the amount of risks written, that was on business of one, three and five years, was it not?

A. Which increase? Let me understand.

Q. The increase for 1917 and the premium income?

A. I think, sir, that was largely due to the enormous increase in value in stores.

Q. I say, those policies written in that year were policies, some of them written for one year?

A. Yes.

Q. Some for three years?

A. Yes.

Q. Some of them for five year?

A. Yes, sir.

Q. Now, the big risks in this State are written for either three or five years, are they not?

A. There is a certain class of risks that are written for three or five years; the biggest are not. For instance, there

is no term insurance on the biggest stocks of goods whatever. There is no term insurance on the majority of what we call special hazards.

Q. Well, now, this increase in the premium income in 1917, what increase in risks written did that represent, do you know?

A. About two hundred and sixty millions.

Q. Two hundred and sixty millions?

A. Yes, sir.

Q. To that extent the hazard and liability of the companies were increased?

A. To that extent.

Q. Yes. And that hazard on the policies that were written—well, all have been for a year if they were written the latter part of the year, and all of them that were written for three years, and written for five years, that liability still exists?

[fol. 3108] A. Still exists; still exists.

Q. And the loss ratio will not fully appear until those policies have——

A. No.

Q. —have matured?

A. No, sir. About thirty per cent of the entire business is term business; that is, it is three year business; and about ten per cent is five year business—ten or eleven.

Q. And then forty per cent of it was business other than the year business?

A. Yes, sir.

Q. Now, I will get you to state to the Commissioner, Colonel Waterworth, what you know about the increase in the physical and moral hazard of the risk the companies are taking today, and have been taking since the war broke out?

A. Oh, it has very much increased.

Q. Just explain in what respects it has increased?

A. Well, it has increased, to begin with, by the tremendous pressure of production; the greater production has doubled over previous years, over the years before the war. The rate of production has doubled.

Q. As I understand, you mean by that that instead of working eight hours now they are working sixteen, or twenty-four hours?

A. Yes, and working with an intensity which we never conceived of before two years ago.

Q. Let me see if I understand you. They are working longer hours than they worked before the war began, and they are working a great many more people?

A. A great many more hands, and have accumulated a great deal more property in one place.

Q. Well, now, let me ask you whether it has actually [fol. 3109] followed that condition, owing to the press and the urgency of things, that that has not also resulted in the accumulation of a great deal of debris and fire producing elements around these factories and stores and different places that are insured?

A. Necessarily that has followed. One of the most serious of all the risks have been the obstruction of transportation, freight, whereby immense quantities of goods have been concentrated in exposed positions, such as on wharves and in terminals where they could not be moved, where they have remained for a month or six weeks, or two months, or as much as six months longer than the time which is usually used in moving them.

Q. Now, have you observed from your experience and reports that come to you any material increase in fires that have been occasioned by reason of that?

A. Yes. The most notable of all was the fire at Tom's Island and Jersey City, where $11,000,000 were burned in one fire on freight that could not be transported. It was simply lying there; no watchman; and could not be moved.

General McAllister: Where was that, Colonel?

A. New Jersey, on the wharves.

Judge Revelle: Those things, Colonel, crowded conditions and speeding up on work——

A. Yes.

Q. —etc.; they are all regarded in the fire insurance world as great hazards, are they not?

A. Yes, sir; very great; very great.

Q. And as a matter of fact, they are productive of a great many fires?

A. Yes, sir; very great and large.

Q. Are they not?

A. Yes, sir.

[fol. 3110] Q. Colonel, you are familiar with the system of the departments in charging the companies with reserves, are you not?

A. Yes, sir. The companies are compelled by law to put away in a reserve fund fifty per cent of the entire premiums received on annual business, and a pro-rated amount on two and three year business; that is, two-thirds on three year business, and four-fifths on five year business. That is to say, they have out of the premiums of the year—they have to maintain a fund equal to about sixty per cent of the entire premiums received during the year.

Q. Well, that is the practice of the companies?

A. Oh, yes, they have to do that. The law requires that.

Q. And they do do it?

A. Yes, they do do it.

Q. And then as I understand it, when a company collects a premium, say of a hundred dollars, there is on the average sixty dollars of that charged against them as a liability?

A. Yes, sir; for that year.

Q. For that year?

A. For that year; fifty of it for that year.

Q. Fifty for the first year?

A. Yes, fifty for the first year.

Q. If it is a five year business?

A. Four-fifths.

Q. If it is five year business they charge you about sixty-five per cent?

A. It says pro-rate.

Q. Isn't that true?

A. Yes, sir.

Q. About sixty-five per cent on five year business?

[fol. 3111] A. Yes.

Q. And about what is it on three years?

A. It is two-thirds on three years; have to put away two-thirds of the premium for that year, for during the term of the year.

Q. Now, if the company has an expense ratio after paying their agents commissions, and those taxes, and their over head expenses, say if they have an expense ratio of forty-five per cent, by that you mean forty-five per cent—they collect a hundred dollars——

A. Yes.

Q. —it costs them forty-five dollars to get that business and to carry it, without figuring on the loss ratio?

A. Forty-two.

Q. Well, forty-two. Now more than that?

A. It is now more than that.

Q. And then say if there is a reserve of sixty per cent charged, that takes one hundred and two dollars, or two dollars more than they have received for that one year?

A. For that one year.

Q. Without counting their losses?

A. Their losses at all, yes, for that year.

Q. Colonel, do you know what the per cent of that reserve is required in the end to meet the liabilities of the company? Say if they are charged with a reserve of fifty per cent, do you know what per cent, on the average, of that they are really called upon to pay out?

A. I don't know, sir.

Q. You don't know?

A. No, sir; I don't know. It is—if they follow the regu- [fol. 3112] lar loss ratio of sixty per cent of the entire amount, why, it is very heavy; that is, in Missouri.

Q. A fire insurance company, unless it has some surplus to go on, it will invariably at the end of a year, at least, its first year's business, show impairment, will it not?

A. Oh, yes; yes.

Q. On account of the reserve liability that is charged against them?

A. Yes; they could not do a first year's business without putting up money.

Q. Now, you have given the experience of the companies for the years 1913, 1914, 1915, 1916 and 1917?

A. Yes, sir.

Q. You were familiar with their experiences, say for the period of five years prior to that, were you not?

A. Yes, in a general way; yes.

Q. I will ask you to state what their loss ratio and their expense ratio for the years 1912 and 1911 and 1910 were?

A. I can by reference tell you. Now, the loss ratio—would you wish me to refer to my memoranda?

Q. If you have one that will refresh your memory, yes.

A. I can't tell you all those ancient figures.

Q. That is a memoranda that you have prepared yourself?

A. Yes, sir; this is the memoranda that I will state is taken from those published figures and agrees with those published figures in the reports.

Q. That is something you prepared yourself?

A. I prepared this myself for my own information. Now, what years?

[fol. 3113] Q. Now, I would like to have the loss ratio and the expense ratio for the years 1912, 1911 and 1910?

A. 1910 was fifty-seven and one-half.

Q. You mean the loss ratio?

A. Yes.

Q. And what was the——

A. 1911 was seventy-five and three-tenths.

Q. Give me the expense ratio for 1910?

A. I can't tell you.

General Gose: 1911?

A. 1911, sir, was seventy-five and three-tenths of the net premiums.

General Gose: Net premiums?

A. Yes, sir.

Q. And that was in 1911?

A. 1911. 1912 did you ask me for?

Judge Revelle: Yes.

A. Was sixty-seven and sixtenths, and I believe that the expense ratio was forty-one per cent.

Q. Forty-one?

A. Yes, sir.

Judge Revelle: I think that is all.

General Gose: Well, it is half-past five o'clock now.

The Commissioner: What time shall we meet in the morning?

General McAllister: Oh, ten o'clock.

Mr. Leahy: Very well.

The Commissioner: Very well, adjourn until ten o'clock in the morning.

Thereafter, to-wit, on Thursday, the 22nd day of August, 1918, pursuant to the foregoing adjournment for the day, said hearing was resumed at ten o'clock a. m., at the same place, and with the same parties present as on yesterday,

[fol. 3114] and the further hearing of testimony in said cause was resumed, as follows, to-wit:

The Commissioner: Are you ready to proceed, gentlemen?

Judge Revelle: We are. We turned Colonel Waterworth over to them for cross-examination on yesterday evening just as we adjourned.

General McAllister: Of course, the understanding is that our position is that the testimony of Colonel Waterworth, which was not submitted to the Insurance Commissioner, is incompetent, but with that understanding we want to cross-examine him.

Judge Revelle: Yes, the understanding is Colonel Waterworth was examined and went as fully into these matters that he testified to yesterday before the Superintendent as we did in our examination of him on yesterday.

General McAllister: We want to preserve our theory of th proceeding.

Judge Revelle: Yes.

The Commissioner: Are you ready to cross-examine the Colonel now?

General McAllister: Yes, sir.

The Commissioner: Proceed with him.

Col. James A. Waterworth, one of the relators, on the witness stand at the hour of adjournment on yesterday, now recalled for cross-examination, upon being examined testified as follows, to-wit:

Cross-examination by General M'Allister:

Q. Colonel Waterworth, from what sources did you obtain the information as to premiums paid, expenses and losses, to which you referred in your testimony on yesterday afternoon?

[fol. 3115] A. From the published reports of the department.

Q. On the Insurance Department?

A. Of the Insurance Department, in the main; yes, sir.

Q. Of the Department of Missouri?

A. Yes, sir; in the main.

Q. In the main?

A. The expenses are given in the reports for the last three years; that is, they are furnished to the Department and the Department has them in its possession. Prior to that time the expenses were gatherel from the same source by our own collation officer, that is, taking them up.

Q. They are all based upon statements and reports of the insurance companies?

A. Yes, sir.

Q. In your estimates, did you include anything in premiums except the net premiums paid?

A. Net premiums paid?

Q. Yes.

A. Yes, sir.

Q. You did not take into account other earnings of the companies?

A. No, no. Until this final count put in yesterday of the proceedings of 1917, in my estimates there is nothing taken in except the premiums.

Q. Yes.

A. Yes, sir.

Q. The expenses which are chargeable to the business in Missouri are arrived at on the pro-rata basis, are they not?

A. That is to say, there are separate accounts kept by the companies of their expenses in Missouri.

Q. In Missouri?

[fol. 3116] A. Oh, yes; yes, sir.

Q. Do you know what is included in those items that are chargeable exclusively to Missouri?

A. Well, there is the special or chief item of agent's commissions.

Q. Yes.

A. That is the chief item.

Q. Yes.

A. And then there is the cost of the special agents salaries and expenses in going around the country keeping track of the business, by examinations of the companies, and the adjusting of losses.

Q. Yes.

A. And then there is taxes for Missouri, payable for Missouri.

Q. Yes.

A. And then there is Missouri's pro rata of what we may call the overhead expenses for management of the business as a whole.

Q. Now, that is arrived at—how do you arrive at the Missouri part of that, that is chargeable to the Missouri business, of that so-called overhead?

A. Every month the Missouri agent sends in an account.

Q. Yes, but I am talking about the overhead; what you call the overhead now?

A. Oh, we have to get that specifically from the reports of the companies, yes, sir, themselves.

Q. Do you know on what basis they could determine what part of the general overhead expenses were chargeable to the business in Missouri?

A. I presume that would be pro-rated.

Q. Now, according to the amount of business?

A. Yes, according to the amount of business done.

[fol. 3117] Judge Revelle: On a premium income?

A. Premium income. That is what I mean by business.

General McAllister: The ratio would be the same ratio that the total premium income, or that the Missouri premium income bears to the total premium income?

A. Yes, sir; I take it that that is the mode—about three per cent or more.

Q. Would the companies business in Missouri be charged up only with Missouri taxes?

A. Yes; that is, the statement of the Missouri business, but the overhead business would take in Federal taxes.

Q. Yes. There would be no State taxes then charged to and handled as general overhead expenses?

A. Not in making up the account against Missouri, I take it.

Q. You think it ought not to be at any rate?

A. Yes, unless they distribute the whole expense on a pro-rata basis.

Q. Well, that would not be fair, would it, Colonel?

A. Well, it gets finally in the last outcome very nearly to that, doesn't it?

Q. You think that is based on the—it is distributed?

A. The Missouri expense probably it is, and it is full pro-rata of the overhead expense, yes.

Q. Yes. They would be about the same you think?

A. I think they would be very close to the same.

Q. Now, you say premium income; that is limited to premiums paid, is it not?

A. Yes, sir.

[fol. 3118] Q. Yes. That does not include any other earning the company may have made?

A. No.

Q. Interest earned on its surplus or things of that kind?

A. That is not included in the premium accounts, no.

Q. And that is included in your estimate?

A. They were not. It was not. It has a strict application to business in Missouri.

General McAllister: Yes. That is all.

General Gose: With the understanding that we may call him later, of course.

The Commissioner: Yes, sir.

Judge Revelle: Now, Colonel——

Redirect examination by Judge Revelle.

Q. Now, Colonel, do you personally know just how these apportionments are made, as for instance, the Federal taxes to each State, or is that merely a surmise on your part?

A. Well, it is really derived from talking with some of the authorities of the companies.

Q. Now, has an insurance company any income other than its premium income, and then such earnings as it makes upon its capital and its surplus?

General McAllister: What is that question? Read it.

Q. (Read by stenographer.) Now, has an insurance company any income other than its premium income, and then such earnings as it makes upon its capital and its surplus?

The Witness: No, I do not think it has any other income.

[fol. 3119] Judge Revelle: In speaking of those relative ratios, referring to the loss ratio and the expense ratio, you dealt merely with the premium income?

A. Premium income.

Q. And haven't taken into consideration the earnings on capital and surplus?

A. No.

Q. Now, the companies do report, and have reported since 1915, all of their earnings of every character and kind?

A. They have.

Q. Have they not?

A. They have.

Q. That is reported as a separate item?

A. Yes, sir.

Q. Mere means of bookkeeping?

A. Yes, sir.

Judge Revelle: That is all, I believe.

General McAllister: That is all for the present, Colonel.

Witness excused.

Judge Revelle: Now, Mr. Commissioner, we want to conform to your convenience and whatever arrangements you desire to make. We have Mr. Hess here; I expect that his examination would require a couple of hours; and we have Mr. McCormack and Mr. Remmers from St. Louis, whose examination will not consume very much time. If it is necessary for you to leave, say this morning, or by noon, we perhaps had better defer the examination of Mr. Hess until the next hearing.

The Commissioner: I would be glad if you could examine the shorter witnesses now. I will know at eleven o'clock whether it is absolutely necessary for me to leave.

[fol. 3120] Judge Revelle: All right.

The Commissioner: I hardly think it will be necessary for me to absolutely go, but then I will know by that time for certain.

Judge Revelle: Well, you come around, Mr. McCormack.

Charles B. McCormack, of lawful age produced as a witness on the part of the Relators, being first duly sworn, upon examination testified as follows, to-wit:

Direct examination by Mr. Lenhy:

Q. Mr. McCormack, what is your business?

A. General contractor.

Q. Where do you live?

A. St. Louis.

Q. How long have you been in the contracting business?

A. Since 1875—since 1880, I went to work at the trade in 1875.

Q. And during that time you have been engaged in the erection of buildings in St. Louis?

A. Yes, sir.

Q. And other cities?

A. No other cities.

Q. No other cities?

A. No.

Q. Now, are you familiar with the cost of materials that go into the construction of buildings?

A. Somewhat.

Q. What do you mean by "somewhat?"

A. Well, they are fluctuating so fast nobody can be familiar today, because if you want to figure on anything [fol. 3121] you have to ask for prices within twenty-four hours before you use them.

Q. Were you familiar with the cost of materials necessary in the construction of buildings, say in 1914?

A. Yes, in a way; yes.

Q. Has there been any increase in the cost of materials since the war began?

A. Greatly.

Q. What would you say was the increase in the cost of materials now as compared with the time prior to the war?

A. Well, I have had reason to go into this in detail in the last three years; that is, in 1916, 1917 and 1918, for the purpose of furnishing to a large manufacturing concern in St. Louis how much insurance they should carry on their buildings. In other words, to put a value on their buildings at these different dates. In 1916 I put a valuation on the Liggett-Meyer Tobacco plant of about $2,500,000, and in 1917 they employed me again to run that down to date, and I increased it forty per cent, to $3,400,000; and in 1918, just lately, I was also asked to put—without going into so much detail—take one building, and the increase on that building would be about sixteen per cent. In other words, it has increased fifty-six per cent since 1916.

Q. Materials that is that went into the building?

A. That is on account of the cost of material and labor.

Q. And labor? What would you testify then was the increase in the cost of material necessary in the construction

of buildings, and labor, or in the increase in the cost of constructing a building the last two years?

[fol. 3122] A. Well, I would say about between fifty-six and sixty per cent.

Mr. Leahy: That is all, General.

Judge Revelle: That is all.

The Witness: I would like to demonstrate a little bit of that for your benefit. In 1915 glass, the discount list on glass was 90 and 25; today it is 80 off. To demonstrate that more particularly, take the lighter glass, which is ten dollars—a light glass—with 90 and 25 off would bring that lighter glass down to seventy-five cents; today that lighter glass is sold at two dollars, or eighty per cent off the list, two dollars, which three years ago the lighter glass could be brought for seventy cents. Now, that is one example. The price of steel and cast iron went up about a hundred per cent between 1916 and 1917, but has not changed materially since 1917 and 1918. It reached its maximun probably of seventy per cent and is practically holding that price now. Of course, you cannot get it unless its for war purposes.

Mr. Leahy: The Government has put a price on that.

A. Yes sir; for Government purposes. Lumber is almost prohibitive in price now. All dimension timber has gone up practically one hundred per cent in the last three years.

Judge Revelle: What about labor and stone.

A. Labor has increased in the last three years about forty per cent.

Mr. Leahy: And stone?

A. Stone has not increased so much because that was in the ground and only the cost of labor, which is cheap labor, to get it out, but the freight rates has brought it up.

Mr. Leahy: That is all, General.

[fol. 3123] Cross-examination by General Gose.

Q. Are you familiar with labor out in the State?

A. I am not.

Q. Sir?

A. I am not, no more than they are generally controlled by the large cities.

Q. You are speaking about prices of labor and materials in St. Louis?

A. Particularly.

General Gose: I think that is all.
Mr. Leahy: That is all, Mr. McCormack.

Witness excused.

F. J. Remmers, of lawful age, produced as a witness on the part of the Relators, being first duly sworn, upon examination testified as follows, to-wit:

Direct examination by Mr. Leahy:

Q. State your name please?
A. F. J. Remmers—Frederick Joseph Remmers.
Q. You are president of the Remmers Construction Company?
A. Yes, sir.
Q. You are in the building business?
A. Yes, sir.
Q. How long have you been in the building business?
A. Fifty years.
Q. How much of that time have you been in St. Louis?
A. All the time.
Q. All the time? You have erected a number of large buildings in St. Louis?
[fol. 3124] A. Yes, I have erected all kinds of buildings, and built the homes of a good many of our well known people.
Q. Well, Mr. Remmers, are you familiar with the cost of materials prior to the war, and at the present time?
A. Well, pretty fairly so. I went into it pretty thoroughly last spring and made an itemized account of the conditions of the percentage what it had raised up to that time, and since that I find that the cost has gone up considerably and I had to go to work and change that, and I made up another list of the different classes of work all the way through the building.
Q. Well, what has been the increase in the materials and labor necessary to go into the construction of a building in the past—now as compared with the time prior to the war?
A. Well, if you will permit me to read from memorandas I made?
Q. No objection to that I presume.

A. I had to make that because I couldn't memorize it all. As to the present I made summaries of minor articles that I couldn't all enumerate, of which constitutes about three per cent of the make-up of the building, by going a hundred per cent—well, it has raised about ten per cent, which would be thirty hundredths—cut stone has raised about nine per cent and a raise of twenty-five per cent; and brick work I have got—you see I have to strike an average so as to make a hundred per cent—brick work eighteen per cent, raise seventy-five per cent, which would be thirteen and one-half per cent.

General Gose: Just a moment. Excuse me for interrupting you, but you say eighteen per cent raise?

Mr. Leahy: Yes. No, he says eighteen per cent.

[fol. 3125] General Gose. Just a moment. Let me ask him. Just let me finish with him please.

Mr. Leahy: Let me finish with him first and then you won't want him.

General Gose: All right. I will have to go over all those figures.

Mr. Leahy: I don't think you will if you will just allow me to finish.

General Gose: All right.

Mr. Leahy: I understand you to say, Mr. Remmers, that brick is eighteen per cent of the construction of a building?

A. Take it as an average of ordinary buildings.

Q. Yes. Now, what has been the raise in the cost of brick?

A. Thirteen and a half per cent.

Q. Now, stone is what per cent of the construction of a building?

A. Excuse me, I want to go back. It has raised seventy-five per cent and on the eighteen per cent it would make thirteen and a half. You see that is how I get at the total.

Q. Now, let's take this construction here——

A. That is nine per cent of the building.

Q. Now, wait a minute. "Sundries"—you have an item here of "sundries?"

A. Yes; those are minor articles in general that you cannot enumerate.

Q. That you cannot enumerate?

A. Yes.

Q. Now, you say that is about three per cent of a building?

A. Yes, sir; and the advance would be ten per cent.

Q. The advance in these sundries is ten per cent?

[fol. 3126] A. Yes, sir; which would make——

Q. Now, just a minute. Now, this is cut stone, is it?

A. Yes, sir.

Q. That is nine per cent of a building?

A. Yes, sir.

Q. And the advance in that since the war began is twenty-five per cent?

A. Yes, sir.

Q. And brick is eighteen per cent of a building?

A. Yes, sir.

Q. And the advance in that is seventy-five per cent?

A. Yes, sir; that is right.

Q. Iron is five per cent of a building?

A. Yes, sir.

Q. And the advance in that is what?

A. A hundred and twenty-five.

Q. What is the next item?

A. Sheet metal.

Q. That is one per cent of a building?

A. Yes, sir.

Q. What is the advance in that?

A. Eighty-five.

Q. Per cent?

A. Yes, sir.

Q. Heating? What per cent is that?

A. Two per cent.

Q. And what is the advance in that?

A. Twenty-five.

Q. Now, of the mill work is what per cent of the building?

A. Ten per cent.

Q. And what has been the advance in that since the war began?

[fol. 3127] A. Six per cent.

Q. Marble is eight per cent of a building?

A. Yes, sir.

Q. What is the advance in that?

A. Forty per cent.

Q. Painting?

A. Painting.

Q. Painting is three per cent of a building?

A. Yes, sir.

Q. What has been the advance in paint since the war began?

A. Thirty per cent.

Q. Plaster is three per cent of a building?

A. Yes, sir.

Q. What has been the advance in that?

A. Eighty-two.

Q. Glass is two per cent of the ordinary building?

A. Yes, sir.

Q. And what has been the advance in that?

A. A hundred and fifty.

Q. And plumbing is what per cent of a building?

A. Seven per cent.

Q. And what has been the advance in that?

A. Fifty per cent.

Q. What is that?

A. Slate.

Q. Slate is what per cent of the ordinary building?

A. Three per cent.

Q. And what has been the advance in slate?

A. Six per cent.

Q. Carpenters and lumber?

A. Sixteen per cent.

Q. And what has been the advance since the war began?

A. Fifty-six per cent.

[fol. 3128] Q. Concrete and masonry ten per cent of a building?

A. Yes, sir.

Q. And the advance in the cost has been what?

A. Fifty per cent.

Q. Now, when you say these various items or per cent of the building, you mean of the cost of the building, do you?

A. No, of the component parts. You see, you have to have a hundred to work from. You see that makes a hundred. That is a hundred per cent. See that is the total of the building. That is the only way you see because the rest of the material is so different, one from the other, and

this you get all the different component parts to make up this unit. You never know where you are at. You see the difference in the rest of the material?

Q. Yes.

A. Now, if you will get the different component parts of this unit——

Q. I understand that. What you are determining here when you say that, for instance, iron is five per cent of the building, you mean that of the ordinary building?

A. Ordinary construction.

Q. Of the ordinary building?

A. Yes, sir.

Q. Five per cent of the construction is iron?

A. Yes, sir.

Q. Is that what you mean?

A. Yes, that is what I mean. Now, if you take a first-class building like Mr. McCormack was telling you——

Q. The Liggett-Meyer Building?

A. Yes, like the Liggett-Meyer Building, the principal [fol. 3129] component parts is iron and steel, brick and stone. They are the principal ingredients, and raises that building higher in percentage than you would the ordinary building.

Q. In this summary you have tried to make it typical of the ordinary building?

A. Yes, sir.

Q. What, then, is the general average in the cost of construction since the war began?

A. Well, I would say——

Q. General average of advance in cost?

A. I would say sixty per cent. This is 56.85. I would say sixty per cent.

Mr. Leahy: I think that is all.

Cross-examination by General Gose:

Q. Now, of course, you understand our exception to this testimony?

The Commissioner: Yes, as I understand it, your general objection goes to all this testimony.

General Gose: All of this testimony; yes.

The Commissioner: Of course, if you have any specific objections outside of that you will make them, as I understand it.

General Gose: Yes, sir. Mr. Remmers, you are referring now to the costs as you know them in the city of St. Louis?

A. Yes, sir.

Q. Now, what kind of buildings did you have in mind when you made this schedule?

A. Well, the average class of buildings as they come along; residences, flats, store buildings and mercantile buildings.

Q. Ranging from what price?

A. Well, prevailing prices then and now.

[fol. 3130] Q. I say from what price of building, ranging to what?

A. Oh, oh; well, all the way from, say from fifteen hundred up to a hundred thousand dollars.

Q. Yes.

A. Or a hundred and twenty-five—a hundred and fifty.

Q. Well, would a fifteen hundred dollar building have nine per cent of cut stone in it?

A. It may have, and it may have more.

Q. Would it ordinarily have?

A. It may have, and it may have more.

Q. Would it ordinarily have?

A. Well, that would be ordinarily.

Q. How many buildings in St. Louis would you say of the value of fifteen hundred dollars are nine per cent cut stone?

A. I couldn't tell you that.

Q. Do you recall any you have built that were nine per cent cut stone?

A. Yes, that is where I got it. I got it from my records.

Q. Well, how much of that fifteen hundred dollar building would be marble?

A. Well, there might not be any.

Q. Yes. How much of it would be steel?

A. I don't think there would be any.

Q. How much—how many of the fifteen hundred to three thousand dollar buildings throughout the state would have

eighteen per cent of brick in them? Put it at a fifteen hundred dollar building, how many of the fifteen hundred dollar buildings throughout the state would have eighteen per cent brick in them?

A. I couldn't tell you that, unless I would figure up the [fol. 3131] buildings. You see the way I did this, I have taken a number of buildings from my records and took the percentage of those and added them together and divided them by the number of buildings, so as to make up the average.

Q. How many of those buildings that you included in that were fifteen hundred dollars?

A. Perhaps one.

Q. One?

A. Perhaps so.

Q. What was No. 1 hard pine flooring worth on the first of January, 1915, six inches wide, twelve feet long?

A. I don't recall that exactly.

Q. What was it worth?

A. So many different prices made I couldn't recall that by memory.

Q. Do you know what it was worth on the 1st day of January, 1915?

A. No, I can't remember that.

Q. Do you know——

A. Prices change so much.

Q. Do you know what weather boarding, regular, say white pine weather boarding, six inches, — worth on the 1st of January, 1915?

A. White pine?

Q. Yes, sir.

A. No, I don't; I am not sure of it.

Q. What was that worth the 1st of January this year?

A. I don't remember those things.

Q. What was yellow pine siding?

A. Siding?

Q. Weather-boarding, worth the 1st of January this year?

[fol. 3132] A. I couldn't tell you; I don't remember.

Q. What was it worth the 1st of January, 1916?

A. I don't remember that.

Q. What were 6x6 yellow pine studding worth the 1st of January this year?

A. They were worth about—6x6? How long?

Q. Fourteen feet, say?

A. Fourteen feet?

Q. Yes. How much a thousand?

A. Yes, by the thousand, I guess they were worth thirty-five dollars.

Q. What were they worth January, 1916?

A. I think they were worth about twenty-eight.

Q. Are you sure of that?

A. No, I am not sure of it. I am trying to memorize as near as I can.

Q. Well, what was cement worth by the bag the 1st of January this year?—Portland cement?

A. Yes, I know what you mean. I really don't—I couldn't memorize that for sure.

Q. What is the difference between the price of iron January, 1917, and iron today?

A. 1917?

Q. Yes, sir.

A. I think it has raised about—I think it has raised in 1917 and now it has raised in the neighborhood of fifteen per cent.

Q. What was the price January, 1916?

A. I couldn't give you the exact of that.

Q. What was forty-pound tin worth the 1st day of January, 1916?

A. I couldn't give you that date.

Q. What was it worth January 1, 1917?

A. I cannot memorize those things.

Q. Well, what was it worth January, 1918?

[fol. 3133] A. I say I cannot memorize those things. I didn't try to memorize that. When I made up my list I took my prices then and there.

Q. Now, last spring when you went into the question of the rise in materials, why did you go into it for any particular reason?

A. Did I go into it for any particular reason?

Q. Yes. For revaluation of buildings or anything of that character?

A. Well, I did at the time that Mr.—but that is a year—I did with Mr. McCormack at the Liggett building at that time. After that I was requested to tell and see what the difference was.

Q. Did you make valuations of any specific buildings?

A. I did with Mr. McCormack on the Liggett-Meyer.

Q. Is that the only one?

A. That is the only one.

General Gose: I believe that is all.

Mr. Leahy: Mr. McCormack, will you please come back to the stand. That is all for you, Mr. Remmers.

Witness excused.

Chas. B. McCormack, recalled by the Relators, upon examination testified as follows, to-wit:

Direct-examination by Mr. Leahy:

Q. Now, Mr. McCormack, have you the printed price lists of any lumber companies?

A. Yes, I have.

Q. Of what years?

A. 1915, 1916, 1917 and 1918.

[fol. 3134] Q. Will you please look at those lists and tell us what the increase in the cost of lumber, various kinds of lumber, is since 1915?

A. Well, I would have——

Q. The cost of the printed prices in the catalogue of 1915, 1916 and 1917?

General Gose: I suggest you introduce the catalogue and let that show for itself.

Mr. Leahy: Well, we will do that; we will have the catalogue attached, but just to have it in the record, let him state it.

A. I have price lists here of different lumber companies, but they are all—all the price lists are the same. Rather than keep a whole bunch of them I generally throw them away, but when I knew I was coming up here for the purpose of testifying as to the increased cost I provided my-

self with these different catalogues. Now, this is the Seidel Lumber Company, that is in 1915, and that was in October, 1915.

Q. What was the one of 1916?

A. 1916 is the Gruener Lumber Company.

Q. What was the 1917?

A. And the 1917 is the Prendergrast Lumber Company.

Q. That was 1918?

A. Yes; and that is the Boeckeler Lumber Company. And in connection with that——

Q. B-o-e-c-k-e-l-e-r?

A. Yes. When I got this price list yesterday——

Q. That was the Boeckeler Lumber Company?

A. Yes. The new one will be out in about a week; they are printing it. I asked, "Is there going to be any advance?" he said, "Yes."

General Gose: Well, now, wait just a minute. I move to strike that from the record.

[fol. 3135] The Commissioner: Yes, that may be stricken out.

Mr. Leahy: Yes, that may be stricken out. You cannot repeat any conversation of that sort.

A. All right.

Q. Now, Mr. McCormack, the Attorney General has inquired here with reference to the prices of siding in 1915 and at the present; will you look in these catalogues—and I think it was white pine siding, or yellow pine siding——

General Gose: Both of them.

Mr. Leahy: Both.

A. I don't believe white pine siding is quoted.

Q. There is no white pine siding quoted?

A. There is not.

Q. You say there is no white pine siding?

A. Not listed.

Q. Not listed?

A. No.

Q. What was yellow pine siding in 1915?

A. It was $23 a thousand.

Q. What was it 1916?

A. Now, let me tell you something in connection with that; in 1915 we were able to—these are list prices and in—earlier than 1915, and up until 1915, and maybe 1916 we got a larger discount. Today the discount is practically very small off of the list.

General Gose: Now, what is the discount price on that at that time, 1915?

A. Why, I should think about fifteen per cent.

Q. Do you know?

A. Well, I wouldn't say positively because—but my recollection is it was about fifteen per cent.

Q. 1915 yellow pine siding?

A. Was $23.

[fol. 3136] Q. $23?

A. $23.50; six-inch, bevel siding, yes.

Q. $23.50?

A. Yes.

Q. Mr. Leahy: What was it in 1916? About fifteen per cent I believe you said.

General Gose: What company got that price in 1915?

A. As I stated before, it doesn't make any difference.

Q. Well, I understand.

A. This is the Seidel Lumber Company.

Q. I understand. I asked you the simple question, who quoted that price?

A. Well, all right; Seidel Lumber Company.

Mr. Leahy: 1916?

A. 1916 was $36.00.

Q. $36.00?

A. At $36.00.

Q. What, if any, discount was there at that time?

A. Well, I believe we were able to get about ten per cent.

Q. Now, what catalogue are you reading from?

A. Greuner Lumber Company.

Q. What was it in 1917?

A. $51.

Q. What discount were you getting at that time?

A. Well, I didn't have to buy anything so I really don't know. I think we were getting about ten per cent discount.

Q. What catalogue are you reading from?

A. Prendergrast Lumber Company.

Q. What is it now?
A. $51.50.
Q. What discount is there now?
[fol. 3137] A. I don't know.
Q. What catalogue are you reading from?
A. Boeckeler Lumber Company.

Mr. Leahy: We will just offer these in evidence. I believe that is the only matter you inquired about—siding?

General Gose: You can offer them in evidence if you want to but I do not see any use in burdening the record with them after he has read from them.

Judge Revelle: There are other items there, too.

Mr. Leahy: Was there any other item you inquired about?

General Gose: I inquired about tin, cement.

Mr. Leahy: Well, let's see, have you got any price lists on cement?

A. I have from my records, taken from my books, prices paid in 1915, 1916, 1917 and 1918 on cement, sand and gravel, which largely entered into the cost of buildings in 1916.

General Gose: Begin with 1915.

A. I have only 1916, 1917 and '18. I said 1915, but I haven't it. Eighty-seven cents per ton.

Mr. Leahy: For cement?

A. No, that is sand. And in 1917 it was ninety-two and one-third cents per ton. 1918 it was a dollar, thirty-seven and a half cents a ton. Gravel in 1916 was ninety cents per ton; a dollar per ton in 1917, and a dollar, forty-five per ton in 1918. Cement was a dollar, fifty-one and a quarter cents a barrel, net.

Q. When?
A. In 1916.
Q. What was it in '17?
A. 1917 it was a dollar, seventy-five and one-third.
Q. A barrel?
[fol. 3138] A. A barrel.
Q. What was it in 1918?
A. 1918 it was two dollars thirty-two and a half cents.
Q. A barrel?
A. A barrel.

Q. General, I do not recall if there were any other items you interrogated Mr. Remmers about?

General Gose: Tin.

Mr. Leahy: I mean in the way of wood.

The Witness: Six by sixes.

General Gose: Yes, six by sixes.

Mr. Leahy: I show you these catalogues again, Mr. McCormack, of these various lumber companies and look at six by sixes and let us know the various prices in 1915, 1916, 1917 and 1918?

A. In 1915 six by sixes, fourteen feet long, were quoted at $28 a thousand, rough. In 1916 six by sixes are quoted at $32 and a half a thousand. In 1917 they are quoted at $40 a thousand. In 1918 they are quoted at $42 a thousand.

Mr. Leahy: Now, do you care to look at those?

General Gose: No, I don't care to look at them.

Mr. Leahy: I quite agree with you, I do not see any purpose gained in encumbering the record with these.

General Gose: No, I don't, either.

Mr. Leahy: But if there is any other item?

General Gose: No, that is all right.

Mr. Leahy: If there is any other, General, I will interrogate him about it. That is all.

Cross-examination by General Gose:

Q. I didn't get your name?

A. Chas. B. McCormack.

[fol. 3139] Q. M-a-c-k?

A. Yes.

Q. These prices that you have given on this lumber are all from different catalogues?

A. Yes, sir.

Q. And you say that all lumber companies range about the same?

A. Absolutely the same.

Q. No difference at all?

A. Not a particle.

Q. Now, the first price list you read from was Julius Seidel, of St. Louis?

A. Yes, sir.

Q. And the second you read from was the Greuner Bros. Lumber Company, St. Louis?

A. Yes, sir.

Q. And the third that you read from was the Prendergrast Lumber Company, St. Louis?

A. Yes, sir.

Q. And the fourth that you read from was the Boeckeler Lumber Company, of St. Louis?

A. Yes, sir.

General Gose: I believe that is all, Mr. McCormack.

Mr. Leahy: That is all, Mr. McCormack.

Witness excused.

Judge Revelle: Now, Your Honor, we will not use Mr. Hess until the next hearing. And that is all the witnesses we have here just now. If agreeable to all concerned we will have our next hearing in St. Louis, on September 3rd.

General McAllister: That suits me.

The Commissioner: That will be agreeable to me. Very well, we will adjourn now until the 3rd of September, in St. Louis.

[fol. 3140] In the Circuit Court of Cole County, Missouri

State of Missouri at the Relation of James A. Waterworth and Harold M. Hess, Relators,

vs.

A. L. Harty, Superintendent of the Insurance Department of the State of Missouri, Respondents

In the Matter of the Second Hearing of the Above-entitled Cause Before the Hon. Roy D. Williams, Commissioner

Thereafter, to-wit, on the said 3rd day of September, 1918, pursuant to the foregoing adjournment, the further hearings in the above entitled cause was resumed before Commissioner Roy D. Williams, in the city of St. Louis, Missouri, at the Planters hotel, all the parties being present in person and by counsel that were present on the first hearing in said matter, and the following proceedings were had therein, as follows, to-wit:

The Commissioner: Shall we proceed, gentlemen?

General Gose: Now, if Your Honor please, we have asked the companies to produce for us the following information, and instead of going into detail and reading it I will hand the stenographer a copy and let him copy it into the record.

The Commissioner: Very well.

(The copy of said information requested being in writing and in the words and figures following, to-wit:)

"1. Itemize all earnings, except premium receipts, for years 1913-1917 inclusive.

[fol. 3141] By itemize we mean by classes such as bonds, notes, rents, unearned premiums, etc., including all sources of earnings other than premiums received on policies issued.

2. Name and residence of all Missouri agents receiving commissions of more than 20 per cent for years 1915-1917 inclusive. Each year stated separately with rate and amount of commissions paid to each agent.

3. Show name, address, position, or office, and yearly salary of all officers, directors, trustees, agents and employees receiving more than $5,000.00 per year whose salary is a part of the overhead, or home office expense, or expense to which Missouri contributes a pro rata.

4. Show aggregate number of all other agents and employees and the aggregate of yearly salaries paid such agents and employees whose salaries are a part of the overhead or home office expense, or expense to which Missouri contributes, or is charged with a pro rata.

5. Give a detailed computation of the interest earned on unearned premiums on Missouri business for the years 1913-1917 inclusive, showing how the total is ascertained.

6. Give a detailed computation of the interest earned on capital stock and surplus for the years 1913-1917 inclusive showing the manner in which you arrive at Missouri's pro rata.

7. In item 5, under expenses charged to Missouri in the report of "Underwriting Experience by Classes," we find

a. Underwriting Expenses.

b. Investment Expenses.

Give the items making up these "home and depart men-
[fol. 3142] tal expenses" and show by detailed computation how you arrive at the proportion paid by Missouri in each instance for the years 1913-1917 inclusive.

8. Itemize "other expenses" set out under Item 6, in the report of "Underwriting Experience by Classes" for years 1913-1917 inclusive."

General Gose: We would like to ask the gentlemen if they are ready with that information?

Mr. Leahy: May it please Your Honor, we have the information contained in the record as filed in the request on us by the Attorney General and I will deliver it to him. I put on top, "Answer to Question 1," or 2, as the case may be. This book gives the information and questions in the second item. With reference to the information asked in the other eight items you will find that in these papers.

General McAllister: Yes. This is the first?

Mr. Leahy: No, that is the second. For your information, Judge, we have employed the certified chartered accountants. Mark, Mitchell & Peak; we have had two men constantly, and three part of the time, working on this. It was necessary for one of them to go to Jefferson City for a day and a half. We now have the information, as shown by those papers, that we have now handed to the Attorney General.

The Commissioner: Yes.

General McAllister: Your Honor please, I am inclined to think we could save time by taking an adjournment and give us an opportunity to examine these figures that have been submitted. I do not know whether we will be able to get through with it by two o'clock or not; I rather doubt it, but we may.

The Commissioner: Well, use your own time. We can frequently save time by giving you the time when you need it.

[fol. 3143] General McAllister: We will let you know, Mr. Leahy.

Mr. Leahy: Yes.

General McAllister: I suggest we take an adjournment then. If we can get around to it by two o'clock we will telephone Mr. Leahy.

The Commissioner: I will be around the hotel at two o'clock. That suits you?

Mr. Leahy: Yes, perfectly.

The Commissioner: We will take a recess then until that time.

Thereafter, to-wit, on Wednesday, the 4th day of September, 1918, counsel for Respondent having not been ready to proceed at the hour of two o'clock on the day before, the hearing was adjourned until 10:00 o'clock a. m. this day, when said hearing was resumed, with all the parties present and the following proceedings were had therein, as follows, to-wit:

The Commissioner: You wish to examine Mr. Hess?

Mr. Leahy: Yes.

The Commissioner: Be sworn, Mr. Hess.

HAROLD M. HESS, of lawful age, one of the Relators herein, produced as a witness on his own behalf as well as on behalf of the other Relator, being first duly sworn, upon examination testified as follows, to-wit:

Direct examination By Mr. Leahy:

Q. State your name?

A. Harold M. Hess.

Q. What is your business?

[fol. 3144] A. Associate Manager of the Missouri Inspection Bureau.

Q. What is the Missouri Inspection Bureau?

A. The Missouri Inspection Bureau is the Inspection and Rating Bureau in Missouri, employed by the fire and tornado insurance companies for making its inspections and rates. We supply property owners, whether insured or not, and companies and agents, with detailed inspection reports covering fire and tornado hazards of all properties in the State. Probably fifty per cent of our work is in making recommendations for improvements in what we call "the physical hazard." Under the rate law of this State we are required to apply a schedule filed with the Insurance Department to all mercantile and manufacturing and miscellaneous risks in the State. And as a result the rates are

practically made up according to the physical conditions in the individual risk. And under this same State law we are required, and do, furnish a great many property owners with copies of the rate values to their individual risks, so that they may be in a position, and are in a position, to judge intelligently as to whether or not their risk is correctly rated, and just what penalties apply to their building and its contents. That almost invariably results in application being made to find out what changes can be made to reduce the rate, and as I say, probably fifty per cent of our time is spent in giving written and oral specifications to property owners and their properly accredited agents for making improvements in the physical hazard and reducing the rate. For that reason the bureau, I believe, is one of the greatest factors in fire prevention work in the State, because it touches a man's pocketbook, and anything that touches a man's pocketbook makes him "sit up and take notice," and he is immediately interested in [fol. 3145] reducing his hazard to the minimum in order that he can get the lowest rate.

Q. How long have you been connected with the Rating Bureau, Mr. Hess?

A. I have been connected with the Rating Bureau in Missouri since April 1, 1911.

Q. And prior to that time what was your business?

A. Prior to that time I was with "The Western Actuarial Bureau in Chicago."

Q. How long were you there?

A. I was there approximately five years.

Q. Are you familiar with the Inspection Bureau as with reference to war work?

A. Yes.

Q. What war work, if any, is it doing, or what work other than the usual work incident to the war is it doing?

A. Immediately after the present war was declared the insurance companies, through the National Board of Fire Underwriters, offered their services to the Government in every way possible in safeguarding against fire—all risks, but particularly those—and particularly those that were vital to the conduct of the war and producing and housing the food and food products, such as elevators and warehouses. The National Board of Fire Underwriters utilized,

by request, the inspection bureaus in the various States for these inspections and recommendations, and we filed with the National Board, and through the National Board with the Government at Washington, copies of all our reports on all risks in the State. In addition to that, we made up quite a number of lists of the special classes of business sought for—sought by the Government. For instance, we recently received a request for information from the Navy [fol. 3146] Department at Chicago for a complete list of warehouses in the State of Missouri, which we were very glad to furnish. In addition to that, we are constantly in receipt of requests from the Fire Prevention Section of the War Industries Board at Washington for special reports on munition plants, and by "munition" I do not mean necessarily ammunition, but anything that has to do with the conduct of the war; supplies of any kind for the army and navy, and we make special reports on those plants and recommendations for improvements. We have co-operated with the Quarterm-ster's Department in making inspections and recommendations on the Quartermaster's Depots in the State, notably here in St. Louis and at Kansas City, and we expect to be called on in the future as we have in the past and to furnish any help and information that we possibly can regarding the physical conditions in this State.

Q. Well, this work incident to the war, these activities you have mentioned, consume considerable of your time; and do they require any additional help?

A. Well, they would require additional help if we could get it, but invariably trained inspectors cannot be had, and we have had to take care of it with our existing force, but it takes considerable time and simply means that much modification of our ordinary activities.

General McAllister: I presume it is understood that our objection to this evidence upon the ground that it was not offered to the Commissioner of Insurance goes to all this?

The Commissioner: My understanding is that objection is written into the record.

Mr. Leahy: The general objection may be.

The Commissioner: Possibly the stenographer had better write that in.

[fol. 3146a] Mr. Leahy: I think he has.

The Commissioner: At the beginning of each witness' testimony. My understanding is it is already in there.

Mr. Leahy: There is a general understanding in that record.

The Commissioner: Yes, sir. I think that is in the record. I presume it is in there.

General McAllister: Yes, it is in the record.

Mr. Leahy: This surcharge that is asked for this time, this increase in rates, what do you understand with reference to whether that is to be permanent or temporary?

A. The application for the ten per cent surcharge is made with the understanding that it is entirely temporary; that it should be taken off voluntarily by the Bureau and the companies just as soon as the war is over and the conditions caused by the war have ceased. The ten per cent surcharge requested is proposed to be inserted as a separate charge on each policy.

Q. Is it to be endorsed on the policy?

A. It is to be endorsed on the policy, and not to be—not to result in any increase in the published rates of the Bureau. The agent will simply figure up the rate and the premium on each policy as he does at the present time, and then simply add war surcharge ten per cent of the premium, to get the total premium due for each policy, so that on the face of the policy the three items will show the normal premium, and the war surcharge, and the total.

Q. Now, are you familiar with the territory that has already been affected—or that has already been covered by this war surcharge?

A. I am.

[fol. 3146b] Q. Will you please state what territory it has affected?

A. The territory already affected by the war surcharge can best be described as practically—as everything east of the—not practically—as everything east of the Rocky Mountains, including Colorado, Wyoming and New Mexico, with the exception of Texas, Oklahoma, Kansas——

Q. Kansas?

A. —Missouri and Wisconsin.

Q. What, if any, increase is there in the expenses incident to doing an insurance business by the various com-

panies represented by you in this application for the surcharge since the war began?

A. There has been a considerable increase all along the line in practically all expenses of doing fire insurance business. Some of those expenses that have been notably increased are the traveling expenses of field men and adjusters, the increase in railroad rates from two and two and one-half to three cents, and an additional war tax of eight or ten per cent on railroad fares and on Pullman fares; the increase in hotel bills is very large; also the postage, telegraph and telephone amount has been tremendously increased; the postage account, of course, being increased approximately fifty per cent alone; and the telephone and telegraph account by the war tax for each message of over fifteen cents.

Q. What about printing—stationery?

A. The printing expenses have increased greatly. The experience in our office alone, and we do a great deal of printing of our rates, shows an increase of anywhere from twenty-five to fifty per cent, due, of course, to the increase [fol. 3147] in paper stock, and increased labor charges and everything that enters into the printing item.

Q. What is the increase, if any, in State and Federal taxes?

A. I do not know that there has been any increase in the State taxes, but the Federal taxes have increased considerably and at a time so that there has been practically no opportunity for that increase to be reflected in the State experience. As an illustration of that, the taxes paid for the year 1915 to the Federal Government were based at the rate of one per cent upon the net income. In 1916 the rate was raised to two per cent, and an additional impost of fifty cents per thousand dollars of the fair cash value of the capital stock and surplus was added. And then in 1917 a tax of one per cent of the gross amount of premiums written, without credit for cancellation or returned premiums, was imposed. The income tax charge was one per cent in 1915 and this was increased to six per cent in 1917, and the fifty-cent, thousand-dollar capital stock tax, is still applicable. In addition, we have a so-called "Excess Profit Tax," based presumably upon an exemption of seven per cent of the capital employed and graduated rate from twenty

to sixty per cent of the net income. In figuring the seven per cent exemption, however, they have excluded practically all of the classes of securities which stock fire insurance companies hold; that is, the amount of the capital is lessened by the full value of the following items; all municipal, State and Government bonds, exclusive of United State bonds; all stock of other corporations; all liabilities, which possibly is extended and will be conconstrued to prohibit the inclusion of any reserves for unearned premiums. Deducting the above from the amount of capital or assets a com- [fol. 3148] pany has, brings it to almost a negligible amount and therefore affords practically no exemption from the application of the tax and places the companies in a position to pay the high scale or rates of the graduated tax. It is impossible to furnish any data as to the effect of this immense increase in Federal taxes at this time. And then in addition to that there is the new revenue law which is now before Congress and which possibly may add additional burdens not previously mentioned.

General Gose: May I interrupt you just a moment? What were you reading from, Mr. Hess?

A. I was reading from a memoranda of the tax situation from the Federal Tax Statement.

Q. Who made the memoranda? Who made the memoranda?

A. It was furnished to me by the companies.

Q. Yes. What you just testified to now was read from some memoranda that was furnished you by the companies?

A. Yes, sir.

General Gose: Yes.

Mr. Leahy: That is only a part of what you have testified to?

A. Yes, just the latter part of it.

Q. Yes. Now, as a matter of fact, you have read from that paper, not because you do not know these facts, but to expedite this hearing?

A. I have not the slightest doubt but what the percentages of taxation that I have quoted are absolutely correct.

Q. You have made an independent personal investigation in the matter and your conclusions are about the same as those indicated on the paper you have read from?

A. Yes, sir.

[fol. 3149] Q. These various taxes, that is, Federal taxes, that you have enumerated are not reflected in any of the figures that have been published by the companies?

A. Not to any considerable extent because the most of them were imposed during the latter part of 1917.

Q. Have you made an investigation to determine the increase in expense items of 1917 as compared to 1913?

A. Yes, I have.

Q. Have you a paper that you prepared on that matter?

A. I have a memoranda here that I prepared myself, a comparison of those items.

Q. Just give us the increase in 1917 over 1913 from the figures that you have from your personal investigation?

A. Salaries and expenses of special and general agents increased thirteen per cent in 1917 as compared to 1913; the home office expenses increased thirty-nine per cent; the printing and stationery increased forty-nine per cent; postage, telephone and telegraph and express increased eight per cent; inspections and surveys increased one hundred and five per cent, but I would caution—I would not use that figure for the reason that in 1913 the companies had a separate account called "Underwriters' Board and Tariff Association," that they put a good deal of that charge into that is now put into the account of "Inspections and Surveys." The Federal taxes have increased three hundred and eighty-seven per cent. And the average increase for those six items I have mentioned is thirty-four per cent.

Q. Have you prepared a summary of the expenses and [fol. 3150] premiums in Missouri for those same years? That is, 1915, 1916 and 1917?

A. I have.

Q. And that paper that you have prepared was taken from the figures—printed figures furnished the Department Superintendent of Insurance in this State?

A. Yes, sir.

Q. Did you have any other information available other than the figures furnished to the Superintendent at the time you prepared this paper?

A. Yes, sir.

Q. What?

A. Other reports of the companies to the various Insurance Departments throughout the country from a publica-

tion entitled, "Fire Insurance by States," that shows comparative figures for the various States, and from the reports of the companies to the National Board of Fire Underwriters for the entire United States, as well as for the individual States.

Q. And all of this—in addition to that, from your own knowledge of the exact situation?

A. Yes. I have every confidence in these figures or I would not give them.

Q. Will you please give us the figures now?

A. You want the analysis of the expenses——

Q. Yes.

A. —for Missouri?

Q. For Missouri, for 1915, 1916 and 1917?

A. For Missouri, for 1915, 1916 and 1917?

Q. Yes.

A. The commissions paid agents were $6,740,552, or 22 1-10 cent of the net premiums for that same period. The salaries and expenses paid Missouri agents and adjusters was $1,419,596, or 4 7-10 per cent of the premiums. The [fol. 3151] taxes, licenses and fees paid in Missouri were $970,644, or 3 1-10 per cent of the premiums. The rating bureau inspections, surveys, etc. expenses were $528,902, or 1 7-10 per cent of the premiums. The home and departmental expenses not included in any of the above were $2,555,665, or 8 4-10 per cent. Other expenses, $168,550 even, which is 6-10 of one per cent of the premiums. The total of those items is $12,383,909, or 40 and 6-10 per cent of the premiums. Now, under the item, "Other Expense," I have included repairs and expenses other than taxes on real estate, allowances to local agents for miscellaneous agency expenses, agents balances charged off decrease by adjustment in book value of ledger assets loss on sale or maturity of ledger assets bills past due charged off and miscellaneous fees and other expenses.

Q. What is the fact at the present as compared to past years with reference to your facilities for making inspections? Has it decreased or increased? Which do you say? That is the matter of prevention of loss by fire? Are there as many men available now to make these inspections or are they less?

A. I have already stated that it is almost impossible to get trained inspectors and we have practically come to the

point now where we have discontinued all usual work except that which is absolutely necessary to comply with the Government's requests for information, and to give every property owner what he asks for. We have had to discontinue a very important part of our work which consists of the regular routine reinspection of towns, town by town, with the idea of finding out changes in hazards that have occurred since the last inspection. The town should be gone over regularly on account of all sorts of changes. [fol. 3152] Agents as a rule, report to us, and that is the only natural one of decreasing any hazard. By making this reinspection we can discover the increase in hazard, many of which are not known to the owner himself, and make recommendations. That work has practically all had to be discontinued.

Q. Would you say the discontinuance of that work would increase the hazard and loss?

A. Yes, sir; most decidedly.

Q. By the way, have any of the men from your particular department gone to war?

A. Yes, we have eight stars on our service flag.

Q. And how many men did you employ in your department, say in March of 1917?

A. We average about twenty-five inspectors all over the State—inspectors and raters.

Q. And eight of those have gone to war?

A. And eight of those have gone to war.

Q. Have you been able to replace them?

A. Only partially and that by new men, inexperienced and whom it takes considerable time to train.

Q. Have you made any investigations as to ascertaining whether there has been, since the war began, any decrease in the facility for fighting fire?

A. Yes.

Q. And what has been the result of your investigation?

A. The fire departments in Missouri are hard put to it to retain their men. In a few cases there have been increases in salaries, which possibly took care of the increased cost of labor to a partial extent, but in a great majority of cases the salaries of firemen have remained the same. A good many of the men have been drafted and the efficiency of the fire department in making inspections and in

[fol. 3153] fighting fires has been materially increased—decreased.

Q. Would you give any percentage as to the increase or decrease by reason of the conditions you have enumerated?

A. I don't think I could name the definite percentage.

Q. Have you made any investigation to determine whether or not the extra time that was put in in various factories and manufacturing plants, the increase in the number of employees, has increased the fire risk and loss?

A. Yes. The manufacturing plants of all kinds, that is, of course, that are considered essential, are working overtime, under crowed conditions and with very little time for maintaining the usual cleanly conditions of the plant. They do not take time for cleaning up as they do in normal times, for cleaning machinery; debris is allowed to accumulate, and every condition works for a decided increase in the fire hazard. That is shown by the large increase in losses for which was in the neighborhood of approximately $2,000,000 for the State of Missouri alone.

Q. Mr. Hess, how do the rates in Missouri compare to those, for instance, in the adjoining States, such as Arkansas, and Oklahoma, Kansas and Iowa?

A. The average rate is much lower.

Q. Can you give us those rates?

A. I haven't them in my mind, but I have a report here to the National Board for every State that I believe is absolutely correct that I can quote them from.

Q. That report was made by whom?

A. Made by—compiled by the National Board from the [fol. 3154] sworn returns of the companies to the Departments.

Q. Could you look at that report and would it refresh your memory as to the rate?

A. Yes, sir.

Q. Very well, look at it.

A. What States?

Q. Well, say take Missouri first. What is the rate in Missouri?

A. These figures are for the calendar year 1916, and show the average rate for Missouri to be 98c; for Nebraska to be $1.41.

Q. $1.41?

A. Yes, sir. For Kentucky, $1.23; for Kansas, $1.20; for Illinois, $1.06; for Arkansas, $1.47; and Oklahoma, $1.65.

Q. Now, how do the losses in Missouri compare to those various States you have mentioned; that is, the percentage?

A. For this same period the losses are shown in Missouri as fifty-five per cent of the premiums for the one year 1916.

Q. That was the best year you have had in twenty-seven years, wasn't it, in this State?

A. The best year in a long time. 1917 was worse than that, and 1915, 1914 and 1913, were all worse than that. In Nebraska the loss ratio was fifty per cent; in Kentucky the loss ratio was fifty-two per cent—fifty-one per cent—I beg your pardon—in Kansas fifty-two per cent; in Iowa—no, not Iowa—in Illinois forty-nine per cent; and in Arkansas sixty-one and a half per cent; Arkansas being the one State of those mentioned that has a higher loss ratio than Missouri, and they all have higher rates than Missouri.

Q. What is the general per cent, or average, for the five [fol. 3155] years preceding the filing of this application for an increase?

A. In Missouri?

Q. Yes.

A. In Missouri for five years, 1913 to 1917, inclusive, the loss ratio was, as I figure it, sixty-three and one-tenth per cent.

Q. What was the cost of doing business? You have given that I believe as about——

A. Forty and six-tenths per cent.

Q. Do you know from personal investigation what proportion of losses are partial losses?

A. Yes, sir.

Q. Now, in dollars and cents what proportion of losses are partial losses?

A. About seventy per cent.

Q. And in number about what proportion?

A. Somewhere between ninety and ninety-five per cent.

Q. Have you made a personal investigation to ascertain what is the increase in the cost of materials since the war began?

A. I have.

Q. That is, materials that are used in the replacement of buildings?

A. Yes, sir.

Q. What is that increase?

A. About forty per cent, possibly a little more somewhere between forty and fifty per cent. That, of course, includes labor also, as well as materials.

Q. Mr. Hess, what do you mean by a "partial loss" by fire, as distinguished from a total loss?

A. In the case of a partial loss the company has the privilege of replacing the lost property, and the amount of the loss is, therefore, determined by the cost of replacing [fol. 3156] the property even though the company may not replace the property, and, of course, they very seldom do. In case of a total loss the company simply pays the face value of the policy.

Q. Have the companies during the past five years preceding the filing of this application adopted a uniform policy with reference to partial losses, as to their paying cash or replacing it?

A. The policy ever since I have been connected with the business has been to pay in cash. Occasionally where there would be a dispute as to the value of the property destroyed, the company maintaining that it can secure better salvage out of the damaged material than the assured, the company will elect to take the damaged material and secure its own salvage and pay a total loss, and very seldom they may elect to replace the destroyed property.

Q. When you pay cash how do you determine the amount you are to pay in a partial loss?

A. By the cost of replacing the property.

Q. Now, are the policies written for a uniform period?

A. No, sir.

Q. Just state for how long a period these policies are written?

A. Most policies are written for one, three or five years; a few policies are written for two and four years; and still fewer policies are written for any term desired; one month, or six months, or eighteen months; whatever insurance the property owner desires.

Q. What proportion of the first year premium on a one year policy is set aside by the company?

A. Fifty per cent for unearned premium.

Q. What proportion of a three year policy of the premium is set aside?

[fol. 3157] A. A three year policy is five-sixths of the premium.

Q. Five-sixths?

A. Five-sixths; yes, sir.

Q. That is, the first year?

A. Yes, sir.

Q. Now, then what proportion of premium of the five year policy is set aside?

A. Nine-tenths.

Q. And take a five year policy, for instance, after the expiration of the second year, what proportion?

A. After the expiration of the first year the unearned premium is reduced from nine-tenths to seven-tenths on a five year policy; the expiration of the second year it is reduced from seven-tenths to five-tenths; the next year from five to three-tenths; the next year from three to one-tenth; and on a three year policy at the expiration of the first year the unearned premium reserve is reduced from five-sixths to three-sixths; and at the expiration of the second year from three-sixths to one-sixth; and at the end of the third year, of course, charged off.

Q. Now, have you stated the uniform practice in giving these percentages?

A. Yes, that is the requirement of the Insurance Departments of all States as decided upon by the Insurance Commissioners in convention, and established and used uniformly by the companies in reporting all their figures. I might add, regarding the prevalence of "term" business, that in 1916 from the sworn returns of the insurance companies the average term of all business written was two and two-thirds years, and that the amount of term business, that is, business running more than one year is what we ordinarily mean by "term" business, both in number of [fol. 3158] risks and amount in dollars and cents, is approximately two-thirds of all the business written. That also brings out an interesting thing regarding the average rate; for instance, for 1916 the average rate throughout the United States was ninety-nine cents, and that covered both annual and all term business. Now, of course, if a great deal of that business runs for more than one year, as it undoubtedly does, the average being two and two-thirds years, the average rate or premium reduced to an annual basis

would be much lower, and that reduction shows that the average rate of all business written reduced to an annual basis was thirty-six cents for the United States in 1916.

General McAllister: That was in 1916?

A. Yes, sir.

Mr. Leahy: Well, how do the insurance companies treat these reserves, do they treat them as an asset or a liability?

A. They have no choice in the matter, they are a liability, because the unearned premium reserve cannot be used for any purpose whatsoever. It is a fund kept on deposit for the protection of the policy-holders in case the company goes out of business, and reinsures its risks, or in case the policy-holders desire to cancel their policies before their expiration.

Q. You have compiled for the Attorney-General a statement of all earnings, except premium receipts, for the years 1913 to 1917, have you not?

A. Yes, sir.

Q. What earnings were there, other than premium receipts, in that period?

General Gose: What is that question?

Q. (Read by stenographer.) What earnings were there, other than premium receipts, in that period?

[fol. 3159] The Witness: For the year 1913 to 1917, inclusive, for the entire United States, for the twenty-seven companies selected by General McAllister, the earnings, other than premiums, were as follows:—Interest on bonds and dividends on stocks, $62,115,364.40, or six and six-tenths per cent of the premiums; the interest on deposits was $2,225,933.08, or three-tenths of one per cent of the premiums; the interest from loans and all other sources was $5,598,042.12, or six-tenths per cent of the premiums—six-tenths of one per cent of the premiums; rents from company property were $4,176,911.31, or five-tenths of one per cent of the premiums; the premiums on perpetual risks, $276,389.67, or three one-hundredths of one per cent of the premiums; from "Conscience Fund" the receipts were $8,981.44, or one-thousandth of one per cent of the premiums; miscellaneous other earnings, $316,402.36, or three one-hundredths of one per cent of the premiums.

Q. What do you mean when you speak of premiums on perpetual risks?

A. The companies have a few policies, particularly in the eastern sections of the country, which began or were taken out years ago upon which an initial deposit was paid, and which practically run from year to year without payment of additional premium, the compensation for the company coming from the interests, or the interest, on the deposits that have accumulated.

Q. What do you mean, Mr. Hess, by the "Conscience Fund?"

A. The companies receive from time to time from various property owners various small sums of money for a variety of reasons, probably due to the fact that the company has been defrauded in case of loss by that property [fol. 3160] owner, and they desire to make the account square.

Q. Now, have you compiled a list of expenses other than losses during that same period of time?

A. Yes, sir.

Q. Will you please give us those?

A. For the entire United States for these same twenty-seven companies and for five years, 1913 to 1917, commissions paid to agents, $190,322,727.03, or twenty and one-tenths of the premiums—twenty and one-tenth per cent of the premiums; salary and expenses paid special and general agents, $41,048,635.18, or four and three-tenths per cent of the premiums; taxes, licenses and fees, other than Federal taxes, $26,724,532.02, or two and eight-tenths per cent of the premiums; Federal taxes, $3,281,970.09, or three-tenths of one per cent of the premiums; Rating Bureau inspections and surveys, etc., $18,776,072.49, or two per cent of the premiums; proportion of home and departmental expenses not included in any of the above, $76,941,436.82, or eight and one-tenth per cent of the premium; other expenses, $19,431,289.36, or two and one-tenth per cent of the premiums; the total expenses, other than losses, were $376,526,662.99, or thirty-nine and eight-tenths per cent of the premiums. The item "Other Expenses" includes some miscellaneous lot of smaller expenses that were established for the Missouri figures, such as repairs, and expenses other than taxes on real estate, allowances to

local agents for miscellaneous agency expenses, agents balances charged off, decrease by adjustment in book value of ledger assets, losses on sale or maturity of ledger assets, bills past due charged off, and miscellaneous fees and other expenses.

Q. Now, the experience of the companies with reference [fol. 3161] to expenses other than losses throughout the United States is thirty-nine and eight-tenths per cent, is it?

A. Yes, sir.

Q. And in Missouri it is almost forty-one per cent, or forty and six-tenths per cent?

A. In Missouri it was forty and six-tenths per cent.

Q. Now, what would you say from your experience and investigation is the per cent of losses throughout the United States?

A. To premiums?

Q. To premiums?

A. When? For what period?

Q. Well, for the years that you have mentioned? For the five years that you have mentioned?

A. I haven't those figures here. To the best of my recollection it is approximately fifty per cent.

Q. And what was the experience in Missouri with reference to the losses compared to premiums for the same period?

A. Sixty-three and one-tenth per cent.

General Gose: Is that for the last five years?

A. That is for the five years, General.

Mr. Leahy: First of all, you have given the Attorney-General an itemized statement of what "Other Expenses" consisted of, have you not?

A. Yes, sir.

Q. Now, from your knowledge what would you say would be the experience in Missouri for the year 1918 with reference to losses compared to premium receipts?

General Gose: We object to that question as calling clearly for the conclusion of the witness and not based upon any fact.

[fol. 3162] Mr. Leahy: Well, they made an investigation to determine up to the present time now what the losses have been compared to the premiums received.

A. The last investigation that I made for the current year was for the first four months, at the expiration of which time the twenty-one largest companies doing business in the state of Missouri submitted figures to us showing that the loss ratio for the first four months of 1918 was over ninety per cent of the premiums for that period.

General Gose: I move that be stricken out; in the first place, it is a self-serving statement, and on the second hand, it is mere hearsay.

Judge Revelle: Your Honor please, I think that from the testimony of this witness that he is a representative of these companies and that they compiled experiences and submitted them to him, and in connection wihth is own knowledge of conditions as an expert rate maker, and his familiarity with the losses as they occur, that statement of his is perfectly competent.

The Commissioner: I will overrule that.

To which ruling by the Commissioner, the Respondent, by his counsel, then and there excepted at the time and still excepts.

Mr. Leahy: Mr. Hess, in addition to the statements that you have received from the insurance companies that you have mentioned here with reference to losses as compared to premiums, do you know of any large fires that occurred in Kansas City, for instance, in the spring?

A. Yes, there have been several large fires. In Kansas City the large conflagration, however, in April—in April, about April 4th, is included in those figures that I have just quoted, but since that time there have been numerous other [fol. 3163] fires, not only in Kansas City, but throughout the State, also in St. Louis. We had the Washington Avenue fire in St. Louis that involved about $500,000, and that has come since that time.

Q. What did those fires in April in Kansas City, how much did they amount to?

A. The property loss was about $3,000,000.

Q. Now, Mr. Hess, when you give this sixty-three per cent as the amount of losses, forty and six-tenths per cent of the cost of doing business——

A. Yes, sir.

Q. For the five years, 1913 to 1917, you do not include or contemplate any reserve put aside to take care of conflagrations, do you?

A. No, sir.

Q. What has been the experience of the insurance companies with reference to conflagrations?

A. In 1916 conflagrations of $500,000 and over throughout the country cost the companies eight and four-tenths per cent of their total premium income. The Insurance Commissioners of the various States, through their association, have decided upon five per cent per year of the premium income as being an equitable conflagration reserve.

Q. So if you add that five per cent which is in addition to the regular reserve to your forty and six-tenths and your sixty-three and one-tenth, what will it give you?

A. You have one hundred and eight and seven-tenths per cent of the premiums.

Q. So during the five years that have been mentioned, from 1913 to 1917, the companies under the losses, cost of doing business, and the reserve for conflagrations, would [fol. 3164] be doing business, or have been doing business in the State of Missouri at a loss of about eight and seven-tenths per cent?

A. Yes, sir.

Mr. Leahy: That is all.

The Commissioner: Do you want to cross examine him now?

General McAllister: Yes.

Cross-examination by General McAllister:

Q. What is the Missouri Rating Bureau? I mean how is it organized? Is it a corporation?

A. No, sir. I guess you would call it a voluntary partnership. I don't know whether that is a legal term, or not.

Q. Now, who conducts it, or controls it? Who does it belong to?

A. The property?

Q. No, I mean the business of the Bureau? The property, yes; yes, the property and business done? Who are the partners?

A. The partners are James A. Waterworth and myself.

Q. Now, is it owned by the insurance companies? Are you and Colonel Waterworth employees of the insurance companies?

A. In one way you might say we were, and in another way not. The property of the Bureau, such as office furniture and fixtures, etc., is in the name of trustees, I guess you would call them.

Q. Well, who——

A. (Interrupting.) And Mr. Waterworth and I lease that.

Q. Who does it actually belong to, Mr. Hess?

A. Well, the property has been all bought and paid for [fol. 3165] since I came to Missouri from the assessments that we have made upon the insurance companies according to their premiums in the State.

Q. Yes. They all contributed?

A. They all contributed as provided by the Rating Law of the State, in accordance with their gross premiums.

Q. Yes. Each of you are paid a salary?

A. I don't know whether you would call it a salary or not, but we monthly draw our own checks for a specific amount.

A. Yes; regularly each month.

A. Yes, sir.

Q. And that and all the other expenses of the Bureau are made up by an assessment against the companies according to their gross premium income in this State?

A. Yes, sir: sufficient to pay the expenses of running the Bureau.

Q. Yes.

A. If the assessment has produced more money than is necessary to run the Bureau the successive assessment is reduced.

Q. I see.

A. And if there is a deficit then the assessment is increased.

Q. You and Mr. Waterworth are the Attorneys-in-Fact?

A. Yes, sir.

Q. For all the insurance companies doing—fire insurance companies doing business in Missouri?

A. Yes, sir. We have filed with the Insurance Department the prescribed form of power of attorney for each one of these companies.

Q. Yes. Now, did I understand you to say that the ex-
[fol. 3166] cess profits tax to be paid by the companies would be large?

A. That is a matter that, as I stated, it is almost impossible to determine, because the rulings of the Government are being changed; the amounts or deductions which the companies may be allowed are being determined upon.

Q. Well, you cannot offer that then as a basis for prospective increased expenses; that is, with any degree of certainty?

A. No; that merely illustrates a tendency——

Q. Yes.

A. —which is apparent on the surface.

Q. Well, it all depends on whether they make profits in excess of seven per cent on their capital and surplus, does it not?

A. Yes, but a great deal depends——

Q. If they make any profit beyond seven per cent on their capital and surplus, they will, but if they do not make any profit beyond seven per cent on their capital and surplus they will not owe any excess profit tax at all, will they?

A. No; but a great deal depends on the definition of surplus.

Q. Now, the basic rate to which you referred, how is that determined?

A. I don't know just what you mean.

Q. How do you make up the basic rate; how do you arrive at it; how do you find what the basic rate is?

A. What do you mean by the basic rate?

Q. Well, now, you used the term; that is what I want to know. I am trying to find out what you meant by the basic rate. You said the basic rate in Missouri was ninety-eight cents.

[fol. 3167] A. I had fotgotten if I did use the term, but if I——

Q. And in Illinois was $1.06?

A. That was the average rate. I would call that the average rate.

Q. Oh, the average rate?

A. The average rate, yes, sir. The basic rate is what we call—the basic rate is an entirely different thing.

Q. So you were referring to the average rate in Missouri?

A. Yes.

Q. As ninety-eight?

A. And I believe I stated so.

Q. I understood you to say basic?

A. If I did, I was in error.

Q. Now, what is the average rate over the United States—the average rate?

A. About ninety-nine cents for 1916.

Q. In figuring the average rate for Missouri at ninety-eight do you include increases approved by the Commissioner last October?

A. No, sir.

Q. Do not include those?

A. Except as they may be reflected in the experience for 1917. The average rate for Missouri on all classes of business for the five years, or rather for fire business alone, is as follows:—1913, $1.06; 1914, $1.02; 1915, 97c; 1916, $1.00; 1917, 93c.

Q. Were those figures you gave in your direct examination as to the average rate, did they include just fire insurance or all insurance?

A. They included all insurance.

Q. Now, have you got the rate there for all insurance for Missouri?

[fol. 3168] A. No, I have not.

Q. You only had the average for the five year period when you said it was ninety-eight?

A. No, that was for 1916 alone.

Q. Oh, that was for 1916 alone?

A. Yes, sir; that was for 1916 alone.

Q. Now, you haven't the average rate on all insurance business in the State for the five year period?

A. No, I have not.

Q. The National Board of Underwriters is an organization or Bureau rather, isn't it, maintained by the companies?

A. I don't know how the National Board is maintained.

Q. Well, they represent the companies, don't they?

A. I believe the companies are members but I am not sure. It may be that the officers of the companies are

members instead of the companies themselves. I am not familiar with the organization.

Q. Well, you know it is not an independent organization, don't you?

A. Yes, sir.

Q. It is an organization made up by the companies themselves?

A. It is an organization made up by the companies themselves that has no jurisdiction over the rates, and that is established by the companies for maintaining a great many things that are of decidedly public benefit. For instance, the National Board is behind the Underwriters' laboratories in Chicago, which is an institution that is examining practically, examining and labeling practically all material entering into any war contracts, such as electric work and chemical work that requires an approval. The National [fol. 3169] Board is behind that and supporting it more than any other factor, and it is the National Board that has taken up with the Government at Washington and assisted in establishing the Fire Prevention Section of the War Industries Board, and the employees of the National Board are active in that work. For instance, the question of improvements in the Quartermaster's Depot here, the arsenal, was up and Major Holland, now in the service, who was formerly an engineer, of the National Board, came to our office and conferred and made his recommendation to Washington. He is doing nothing but that work for the Government.

Q. What percentage of the entire business in the State was term business during this period of five years?

A. The entire business throughout the United States, the entire term business was about two-thirds of the total business.

Q. What was it in Missouri, do you know?

A. No, I do not. I assume, however, that it probably was slightly less than that amount, owing perhaps to the considerable amount of frame business in the smaller towns that is not written for a term; that is, as compared with other districts in the United States.

Q. Do you include one year policies as term business?

A. No, sir.

Q. No, it is not included?

A. No, sir.

Q. Those written for a period longer than one year——

A. Longer than one year.

Q. —is term business?

A. Yes, sir.

[fol. 3170] Q. Now, in determing the premium income or premium receipts how is the premium that has been paid on a policy handled—on a term policy? For instance, a policy is written in 1916 for five years and the full five year premiums paid, now how will that appear, or what part of it will appear in the premium receipts for the year 1917?

A. The policy written in 1917?

Q. No, written in 1916?

A. 1916 ?

Q. Yes.

A. Under our method of figuring none would appear in 1917 because we have figured on a premium received basis. In other words, the experience for each year simply includes the total amount of the premiums received for that year, whether for one, three or five year policies.

Q. Yes. So the premium income as set out in tables and as figured by the companies would include the total premium on that policy in 1916?

A. Yes, sir; that is added in the figures that we have here.

Q. Would it in reports they make to the Insurance Department at Jefferson City?

A. I think they figure it both ways. I think they figure it on an earned premium basis and on a basis of premiums received.

Q. Well, if it is included in the premium income of 1916 there is not much figuring about it, is there? It is just a lump sum of money?

A. That is all.

Q. Now, in figuring on the unearned basis how do you figure?

A. On the earned premium basis, that is they would take—simply take into account—they would simply take into [fol. 3171] account for 1917 premium income these following five items, premiums received in 1917 on one year policies, premiums earned in 1917 on two year policies

written in 1916, but considered as unearned premiums when these policies were written.

Q. Yes.

A. And the same thing for three year business, and four year business, and five year business, simply taking a total sum of the premiums for—earned for each year. I have here a copy of the annual statement as submitted by each company to each insurance department in the country, and it includes the method of figuring premiums earned for each year.

Q. Well, now, in reporting to the Missouri Insurance Department do you know which plan is followed?

A. I think they reported both ways.

Q. Here is a blank table called the "Underwriting Experience by Classes," I suppose you are familiar with it?

A. Yes, sir.

Q. Now, was that table intended to be—in figuring the premium income on that table, how would you term premiums paid on term policies—be treated?

A. I do not know what was intended by the Insurance Department, but I have always assumed, and believe, that the companies simply report their total or net premiums received for that year.

Q. Well, now, what do you mean by "net" premiums?

A. Premiums—gross premiums, less returned premiums on policies cancelled or returned not taken.

Q. Yes.

A. In other words, they would include the total premiums received for that year for all policies written in that year, [fol. 3172] whether it was for one, three or five year policies.

Q. Yes. Now, these figures you submitted to me and those in your memoranda which you have referred to in giving your testimony, from what source now did you secure those figures?

A. These figures were secured from the sources I have already mentioned; that is, the sworn returns of the companies to all the insurance departments of the country from this publication entitled, "Fire Insurance by States."

Q. Now, what is that publication?

A. That "Fire Insurance by States" is a publication compiled by, I believe it is the National Underwriter in New

York, based upon the sworn returns of the companies to the insurance departments.

Q. The figures you have given were from the same source?

A. From the same source I believe. We subscribe to it and pay twenty dollars a year; one volume is published; it comes into our office just like the city directory does, once a year. And all those figures I have attempted to give you, General McAllister, have been based upon total premiums received.

Q. Well, they were based on that if the companies have reported them in that way to the various insurance departments?

A. Yes, sir.

Q. State Insurance Departments?

A. Yes.

Q. Now, in your table of expenditures for 1915, 1916 and 1917, the percentages you gave were based on the various items in proportion to the premium receipts?

A. Yes, sir.

[fol. 3173] Q. And does not take into account other earnings?

A. No, sir.

Q. Now, those figures applied to the twenty-seven companies I believe of which we submitted a list? Now, were those figures compiled from individual reports by themselves to you, or did you just get them from the reports to the insurance departments?

A. We got them from the reports to the insurance departments.

Q. They made under——

A. (Interrupting.) But from the individual report of each company.

Q. I understand, but not——

A. Not from the summary or tabulation.

Q. The very report?

A. From the complete blank.

Q. I see.

A. As published in the rear of the Annual Report.

Q. From the Insurance Department?

A. Yes, sir.

Q. Now, do those figures include all classes of insurance; that is, all character of insurance?

A. Yes, sir; fire and tornado, marine and inland.

Q. That includes all classes?

A. Yes, sir; sprinkler leakage, automobile.

Q. What is inland insurance? What do you—what is the character of that insurance?

A. Inland insurance is the same as marine, except that it doesn't cover around the water. I suppose that marine is used as a general term covering all insurance on anything moving about from place to place, and inland applied more particularly to marine insurance which does not cover beyond the boundaries of the United States, like tourist is [fol. 3174] "floaters," and automobiles is "floaters"; all "floaters" of various kinds that do not cover on the water.

Q. Does that include any form of railroad insurance?

A. I think not. We don't—we don't consider railroad insurance as marine insurance, except where a policy may be written for a shipper on the goods while in transportation.

Q. To go to the water?

A. Well, yes, it would be called inland insurance if they were going to the water. I suppose if they were going across seas they would be classed marine insurance.

Q. I say, goods in transit, not especially going across seas?

A. Anything that is a "floater," but we do not consider railroad insurance, that is, insurance on the terminals and on the freight depots——

Q. I see.

A. —and passenger depots and rolling stock, we do not consider that marine insurance.

Q. No, that is general insurance?

A. Yes, covered under the general clause.

Q. Now, in giving the loss ratio for the first four months of the present year you gave a total for four months?

A. Is, sir.

Q. Now, there was an exceptionally heavy loss at Kansas City, was there not, in April?

A. Yes, sir.

Q. I believe you referred to it?

A. Yes, sir.

Q. Did you figure the ratio loss to premium by months in January?

A. No, sir; I did not.

[fol. 3175] Q. Didn't figure that?

A. No, sir.

Q. Or February?

A. No, sir.

Q. Or March?

A. No, sir. I just asked these companies for the returns for the first four months and they gave it to me in a lump sum.

Q. In a lump sum?

A. Yes.

Q. Well, that would hardly be a fair criterion, would it?

A. Well, I hope not, because if the companies had many losses of $2,000,000 at once in Missouri I don't know how they could continue business here very long. Of course, even though it is an abnormal loss it has to be paid by the companies.

Q. And the effect of it is to very materially increase the so-called loss ratio?

A. Yes, sir.

Q. For those four months in which the month of April was included?

A. Yes, sir.

Q. Now, the five per cent reserve you speak of, that doesn't increase the companies' hazard any, does it?

A. I didn't hear.

Q. That does not increase the companies' hazard to deal with a large conflagration in that way, that is, to try to create a reserve to meet it, it doesn't increase the hazard any?

A. The fact of the business is the conflagration is there and the need of the reserve——

Q. It is there just the same?

[fol. 3176] A. It is there just the same whether they have a reserve for it or not.

Q. That is the point I am trying to get at, that the five per cent reserve they propose to set aside doesn't increase the cost of insurance any—doesn't affect it?

A. Well——

Q. It is a mere method of bookkeeping?

A. In 1916 the conflagrations cost the companies eight and four-tenths of their premiums.

Q. Whether they had set apart certain premium receipts as reserve wouldn't make any difference, would it? It goes into this five per cent; instead of going into the general surplus fund of the company it goes into a reserve fund? I say, it is a mere matter of bookkeeping, isn't it?

A. Unless there is a conflagration comes in and they have to pay it out. Of course, it is a matter——

Q. (Interrupting.) Of course, they would have to pay it anyway if they had not set aside this reserve? So the fact that they have concluded a safe policy is to set aside a reserve to meet these larger losses does not affect the question of rates?

A. But it is not the companies, General, that have concluded that. It is the Insurance Commissioners of the State.

Q. It doesn't make any difference who concluded it, it is a mere matter of bookkeeping and handling the surplus funds?

A. They have concluded that that is a legitimate addition to the loss ratio of an individual State to take care of the conflagrations.

Q. Whether it is incurred, or not?

A. Yes, sir.

Q. Is that your theory?

[fol. 3177] A. It is a percentage to be added to the normal loss ratio in any State.

Q. Do you mean to say——

A. (Continuing:) To cover conflagrations that might occur, and do occur.

Q. You mean to say the Missouri Commissioner has approved that increase of five per cent in rates?

A. I do not know whether the Missouri Commissioner is a member of the Association of Insurance Commissioners or not.

Q. Well, now, when was this agreed to; do you know?

A. No, I don't; it was several years ago.

Q. Was there an increase in rates all over the country as the result of that?

A. If it was right after the San Francisco conflagration there was, because an immediate increase in rates followed

that conflagration. That was the only way in which the companies could recoup their losses there.

Q. At any rate, it would not be a basis for an increase in rates now; that has already been added?

A. Unfortunately, the rates have been going down steadily since 1916, or I should say, 1906, as I have shown here by the rates in Missouri alone having gone down from $1.05 to 93 cents in 1917.

Judge Revelle: In connection with that conflagration fund, General, I want to call your attention to one provision in the Rate Making Act which provides that, "in determining the rates due regard shall be given to the extra conflagration hazard." The Missouri Rating Act provides that.

General McAllister: Yes, I know that. That is true. I don't just see how that is figured as a basis for an increase in this matter.

[fol. 3178] Judge Revelle: To make clear to you what Mr. Hess meant.

The Witness: The rate law provided here——

General McAllister: Yes, I am familiar with that. Yes, I am not quarreling with that provision at all. I think it is correct. But if it is already in there in making up the rate I do not see how it enters into this inquiry.

The Witness: You see the losses in Missouri without any conflagrations are sixty-three per cent of the basis.

Mr. Leahy: For five years preceding?

A. Five years.

Judge Revelle: The loss ratio he has given has not taken in any conflagrations.

General McAllister: You know about figures.

Judge Revelle: There has not been in Missouri any of this loss ratio that has taken into consideration the conflagration losses. They have not been figured in that.

General McAllister: They haven't any application for any increase on that basis at any rate.

Judge Revelle: That is a matter of argument—a matter of conclusion on the part of the Commissioner and the Court.

General McAllister: Now, Mr. Hess, the figures that were submitted by you were not exactly what we wanted. Perhaps our request was not quite clear, but what we wanted

was a statement from each of these companies separately of which we gave counsel a list. Of course, so far as the figures have been filed with the department, they are available to us and we could get perhaps, I suppose by figuring, all the information from the reports that are on file at Jefferson City that you have given us in these figures you have [fol. 3179] submitted; as far as I am able to tell they do not go outside of that. What we wanted was to get an examination of their income—of all incomes aside from premium income. In other words, we want to be able to verify these figures that are filed now to save the trouble and delay and time and expense of an examination of the companies we thought we would let them make a statement of those specific facts which would answer our purpose.

Judge Revelle: Do I understand, General, what you want is an entirely new and separate, distinct statement from these twenty-seven companies directly?

General McAllister: From these individual companies, that is what we were aiming at. Now, I can perhaps make some of the inquiries a little clear and I have kinda blocked out, with a pencil, some notes here.

Mr. Hess: I think we can secure those figures, General, for the entire United States, but I doubt if the companies can give them to you for Missouri alone, except as a pro-rata proportion.

Mr. Leahy: You mean interest and items of that sort?

Mr. Hess: Yes.

General McAllister: Well, we wanted to get the basis on which they figure those things.

Mr. Leahy: I think he can give you that information, General, both receipts and interest, earnings on bonds, stocks and real estate.

General McAllister: Let me read this into the record and see if we can have that information. The total yearly earnings or income from all sources other than premium receipts for each year from 1913 to 1917, both inclusive; that is, commissions stated year by year, and then the total yearly earnings or income from all sources other than pre- [fol. 3180] mium receipts as accredited to Missouri, and the basis upon which that apportionment to Missouri is made; and then an itemization of the sources and yearly amounts from each source of all earnings or income other

than premium receipts or income for each of the years named; the total amount of all Missouri business written and premiums received thereon for each of the years named, and I would like to have that separated into classes according to the term of the policy, one year and under in a class—I believe that is the way you say they handle it—and then two and three and four years; the total amount earned on unearned premiums on Missouri business for those years; total amount of commissions on Missouri business paid agents each year from 1913 to 1917; total salaries and expenses paid agents and adjusters and all fees and other expenses in Missouri business for those years; of course, that means salaries and expenses or fees and otherwise which have been charged by the companies to the Missouri business; name and address of each agent or employee to whom a commission of twenty-five per cent or more was paid on Missouri business in each year from 1913 to 1917, both inclusive, and the total of such commissions paid to each agent or employee in each year; the total amount of all expenses other than payment of losses paid on account of Missouri business for each year from 1913 to 1917, both inclusive, the total amount of all home office or overhead expenses or expenditures, and an itemization thereof by the year, showing on what account or for what purpose such expenditures were made. Now, we do not mean, of course, what is generally understood as an itemization of it—of the various items, but we want to know, for instance, the salaries, fees, expenses and things of that kind, so we can form some judgment of our own as to whether it is a proper [fol. 3181] statement to charge to the Missouri business.

Mr. Leahy: Whether it is an excess item or not?

General McAllister: Whether it is a proper item to charge to the Missouri business. The total amount of the above expenses or expenditures charged to the Missouri business for each of such years, and the method of determining such amount. Now, the total amount of all salaries of over five thousand dollars per annum paid in each year for the years 1913 to 1917, both inclusive. We do not mean the name of the officer or the name of the individual, but the office—the name of the office and the salary. Now, that is all, I believe.

Mr. Hess: Now, may I make a statement?

General McAllister: I want to insert this same list of these companies.

Mr. Leahy: Is that a copy of the companies?

General McAllister: Yes, sir. Mr. Bybee will make you a copy of it.

(Said list of companies furnished to counsel being as follows:)

"Companies to Make Reports.

Aetna Insurance Company.
American Central, St. Louis, Mo.
American Insurance Co., Newark, N. J.
Boston Insurance Co., Boston, Mass.
Connecticut Fire Insurance Co., Hartford, Conn.
Continental Insurance Co., New York.
Great American (German-American), New York.
Glenn Falls Insurance Co., Glenn Falls, N. Y.
Hartford Fire Insurance Co., Hartford, Conn.
Home Insurance Co., New York.
[fol. 3182] Insurance Company of North America, Philadelphia.
National Fire Insurance Co., Hartford, Conn.
Niagara Fire Insurance Co., New York.
Northwestern National, Milwaukee.
Phœnix Insurance Co., Hartford, Conn.
Queen Insurance Co., New York.
St. Paul Fire and Marine Insurance Co., St. Paul, Minn.
Springfield Fire and Marine Insurance Co., Springfield, Mass.
Commercial Union Assurance Co., London, Eng., 55 John St., New York.
Liverpool, London and Globe Insurance Co., Liverpool, Eng., 80 William St., New York.
North British & Mercantile Ins. Co., London & Edinburgh, 76 William St., New York.
Northern Assurance Co., London, Eng., 55 John St., New York.
Phœnix Assurance Co., Liverpool, 52 Wall St., New York.
Royal Exchange Assurance Co., London, 92 William St., New York.
Fire Association, Philadelphia.
Firemen's Insurance, Newark, N. J.

Judge Revelle: May I ask, General, which, or is it both, is that the information that Mr. Hess has furnished is not complete or is it that it is not in the form that you wanted it, or is it both?

General McAllister: Well, to a certain extent it is both. We intended to—what we thought that we would get would be this information from each one of these companies, don't you see?—instead of having it in the aggregate, and we have [fol. 3183] made it a little, or tried to make it, a little clearer as to just what particular information we want. Now, did you have a statement you wanted to make, Mr. Hess, about it?

The Witness: Yes. I am very anxious—of course, we want to secure any and all figures that will shed any light on this question in Missouri, and the figures that we have compiled by practically a week's work of three expert accountants, were the figures which, to the best of my knowledge and belief, we can get—the best figures that we can get. I hoped and believed that those figures would give you the information desired, for this reason, a great many of those items upon which you requested information are not kept separately for Missouri, but are simply pro-rated according to the Missouri premiums as compared to the total premiums of the company, the same ratio, and in all of the exhibits that were submitted we took the Missouri experience for the years 1915 to 1917 upon which we have such individual data for Missouri as we can get and compared it with the same data for the entire United States, comparing the ratios to the premiums in each individual case. I believed, and do believe now, that that shows that Missouri, in the reports made by the companies for those years, has not been pro-rated any excessive amount in those items that have been pro-rated for Missouri. Now, for instance, comparing the United States business of these twenty-seven Companies with the total Missouri business for all Companies for those same three years upon which we have data, 1915, 1916 and 1917, the Missouri commissions are twenty-two and one-tenth per cent, the United States commissions are twenty per cent, showing an excess of two and one-tenth per cent for Missouri. I haven't any doubt but what that is correct, owing to the comparatively [fol. 3184] large amount of large city business in Missouri,

where commissions higher than in the country are paid. While I am on that point, the question of commissions throughout the State, and your request that we submit a list of the agents receiving more than twenty per cent——

General McAllister: Twenty-five per cent.

A. Twenty per cent in the original request.

Q. I have made it twenty-five.

A. (Continuing:) Resulted in our giving you a practically complete list of the agents in the State, because I believe—I am sure that all agents in the State, on certain classes of business, receive more than twenty per cent. But now going back to this comparison, the salaries and expenses paid Missouri agents and adjusters for the Missouri business was four and seven-tenths per cent, for the nation-wide business it was four and ten-hundredths per cent, which is a difference of only six-tenths of one per cent; the taxes, licenses and fees paid in Missouri were three and one-tenth per cent, as compared to two and seven-tenths per cent paid for all taxes, except Federal taxes, on the entire United States business for those twenty-seven companies, which is a difference of only four-tenths of one per cent; a rather remarkable similarity in the percentages all the way through. The Rating Bureau inspections, surveys, etc., was Missouri one and seven-tenths, for the United States one and nine-tenths, only a difference of two-tenths of one per cent. The proportion home and departmental expenses, not included in any of the above, for Missouri was eight and four-tenths, for the United States seven and nine-tenths, a difference of only one-half of one per cent. Other expenses, for Missouri was six-tenths of one per cent, as [fol. 3185] compared with the entire United States, or two and one-tenth per cent, a difference of one and one-half per cent in favor of Missouri. That is a larger percentage for the United States experience than was pro-rated for Missouri. Now, the totals for those three years of all those expenses, for Missouri, showed forty and six-tenths per cent, and for the entire United States thirty-eight and six-tenths per cent, which is an excess per cent of two and one-tenth, yes, which is practically commissions, I may say, in Missouri, where there is a difference of two and one-tenth per cent alone. I hoped that we could show you by these figures that this method used by the companies in making

their returns under this blank, "Underwriting Experience by Classes" were fair and in accordance with their sworn returns to all the insurance department's inquiry. That is what I believe they do show. Now, these figures are just the totals, but in order to get these totals we had to get the data for each individual company, and I have here the totals of all the figures for each individual company, of which we can give you, for the United States, if it will be of any assistance to you, but they are figures that just show these totals that we have compiled. Now, I believe that it will be almost impossible for the companies to go back through their records and separate these figures for Missouri in any way other than the way we have collected them individually for you and collated them. At least, if it is possible, it would be a very long and expensive job. As I say, we want to get any data that will shed light on this question, but it seemed to us after a very careful study of the whole situation that these figures showed conclusively that in the figures we happen to have for Missouri the companies were well within the ratios that their sworn returns on the entire United States business show.

[fol. 3186] Judge Revelle: General, may I ask you, you take on such items, for instance, as home office expenses, such items as in the very nature of the case cannot be subdivided according to the States?

General McAllister: They necessarily are pro-rated. All we ask on that is a general communication stating the general purposes for which the expenditure was made.

Mr. Leahy: General, would it serve your purpose, in the event we cannot get this information you request in a more exact way, will it serve your purpose if we produce a manager here? You might then go into the question of home office expenses with him.

Judge Revelle: As to how they arrive at these different items they charge to Missouri.

General McAllister: I apprehend that different companies will have a different manner of doing that.

Mr. Leahy: Say, we take five typical companies, instead of twenty-seven.

Judge Revelle: That is, to produce managers?

Mr. Leahy: Yes, to produce managers in five companies.

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The Witness: Here is another point right along that same line, if I may say something else—his idea was, you ask for the interest earned on unearned premiums separated by itself for each of these companies—was my understanding correct?

General McAllister: Yes.

The Witness: The companies do not take and open a separate bank account, or a separate investment account for their unearned premiums as compared to any other funds or surplus that they may have on hand. It would be simply a question of pro-rating their total.

General McAllister: I was led to make the inquiry by [fol. 3187] reason of this blank, which I understand they all use—there is interest earned on unearned premiums on Missouri business.

Judge Revelle: That is the proportion that the total unearned premiums bears to the total invisible assets of the company, and that in proportion to the total returns from the total assets.

The Witness: This blank was prepared by the Insurance Department and the companies have simply done their best to comply with the individual data called for.

Judge Revelle: Now, we will be very glad to do this; of course, these companies have a certain system of bookkeeping and their transactions are numerous, but to whatever extent that their system of bookkeeping permits us to furnish the separate, segregated items, of course, we can do that.

General McAllister: Yes.

Judge Revelle: Beyond that we cannot go, but we can do this, we can show you now any such expenses as we do not keep separate accounts, we can show you the method and system adopted in prorating it.

General McAllister: That is all I have asked for there. That is all right.

Mr. Leahy: Now, we have, as you remember, certain affidavits, for instance, one of Mr. Murry Carleton, one of Mr. Jackson Johnson, and Mr. Moran, the architect, and these various builders, and I believe it was agreed at the last hearing that these might be introduced as though the witnesses are here testifying?

General McAllister: Yes, they may be introduced subject to our objection, that it is incompetent unless it was submitted to the Commissioner.

Mr. Leahy: Well, it was; all of it was submitted to the [fol. 3188] Commissioner. We will only introduce with reference to this increase on merchandise and building material such testimony as was submitted to the Commissioner, such affidavits in the nature of testimony, and agreed by the parties hereto that it shall be taken as testimony. One other question, Mr. Hess—have you finished your cross-examination?

General McAllister: Yes, we are through.

Redirect examination by Mr. Leahy:

Q. Just one question—Mr. Hess, you recollect when Mr. Clark made his finding he had to say with reference to lightning insurance—is there any peculiar or particular insurance known as lighting insurance?

A. No, sir. Lightning insurance is simply covered by an endorsement on the fire policy, without additional charge.

Mr. Leahy: If you are ready we might adjourn until two o'clock?

General McAllister: All right. Until two o'clock?

Mr. Leahy: Yes.

The Commissioner: Very well, two o'clock.

Thereafter, at 2 o'clock p. m., on said Wednesday, September 4, 1918, said hearing was resumed, but counsel for Relators and Respondent were not ready to proceed at this time, and by agreement of the parties, with the consent of the Commissioner, and adjournment was taken until the 18th day of September, 1918, at which time said hearing will be resumed at the same place.

[fol. 3189] IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

STATE OF MISSOURI AT THE RELATION OF JAMES A. WATERWORTH AND HAROLD M. HESS, Relators,

vs.

A. L. HARTY, Superintendent of the Insurance Department the State of Missouri, Respondent

In the Matter of the Third Hearing of the Above-entitled Cause Before the Hon. Roy D. Williams, Commissioner

Thereafter, to-wit, on the 19th day of September, 1918, the date heretofore agreed upon at the adjournment of the last hearing herein as the 18th of September, 1918, by agreement of counsel having been reset for the 19th day of September 1918, the further hearing of testimony was resumed in said cause before Commissioner Roy D. Williams, in the City of St. Louis, Missouri, at the Planters Hotel, all the parties being present in person and by counsel that were present on the other two hearings held in this matter, and the following proceedings were had therein, as follows, to-wit:

Judge Revelle: Shall we begin, Gentlemen?

The Commissioner: Any time; suit yourselves.

Judge Revelle: Will you swear Mr. Chapman, if Your Honor please?

The Commissioner: Be sworn, Mr. Chapman.

B. G. CHAPMAN, JR., of lawful age, produced as a witness on the part of the Relators, being first duly sworn, upon examination testified as follows, to-wit:

[fol. 3190] Direct examination by Mr. Leahy:

Q. Just state your name please?

A. B. G. Chapman, Jr.

Q. What is your business?

A. Fire insurance.

Q. What office, if any, do you hold with the American Central Insurance Company?

A. President.

Q. That is a Missouri corporation, is it not?

A. Yes, sir.

Q. Your home office is here in St. Louis?

A. St. Louis.

Q. How long has that company been in existence, Mr. Chapman?

A. Since February, 1853.

Q. And since that time have there been any great conflagrations in this country?

A. Yes, quite a number.

Q. Will you state a few of them please?

A. Chicago.

Q. The year? That was in 1870?

A. 1870.

General McAllister: I assume our——

The Witness (continuing): Or '71, I don't——

The Commissioner: Just a moment.

General McAllister: I assume our objection to this testimony for the reason that it was not presented to the Insurance Commissioner may be understood to extend to all testimony taken today.

The Commissioner: I suppose that is the agreement. That is my understanding of it, at all times.

Mr. Leahy: Yes. Just continue.

The Witness: Baltimore; Chelsea, Massachusetts.

[fol. 3191] Judge Revelle: Will you give the dates of those, if you can, as you mention them?

A. The Baltimore, I do not remember the exact date, I think it was 1904; and I think Chelsea was in 1908—am I right, Mr. Dugan?

Mr. A. G. Dugan: 1906.

The Witness: 1906. San Francisco, Atlanta——

Mr. Leahy: Boston was in 1872?

A. Boston, '72; Atlanta was in 1914 I think—no, 1916; and Augusta.

Mr. Dugan: Tyler, Texas, and Nashville, Tennessee, were all the same day, in 1916.

The Witness: 1916—I said San Francisco; Bangor, Maine, was in 1914. I am not sure of those dates.

Mr. Leahy: That would be sufficient. How, if at all, has your business been affected by reason of the conditions in-

cident to the war? Have salaries increased? The cost of doing business increased?

A. Very materially.

Q. You know approximately what percentage of fires, in dollars and cents, are partial losses?

A. I don't know exactly, Mr. Leahy; I would estimate about seventy-five per cent.

Q. Yes. Now, do you know and have you figured the cost in the—the increased cost in material since the war began?

A. I have not figured it, I have only gone by the estimates of contractors; that ranges between fifty and sixty per cent over the cost of materials prior to the war.

Q. Yes.

General Gose: Now, if the Court please, we move that be stricken out as hearsay, and not independent, based on his own information, but something gained absolutely from hearsay.

[fol. 3192] The Commissioner: Unless you connect it up as to how he acquired that information, I believe I will strike it out. Possibly you can secure it.

Mr. Leahy: You acquired that information in connection with your business, did you?

A. Estimates on losses that were furnished us by contractors.

Q. And you have had a number of such estimates?

A. Yes, sir.

Q. And those estimates were furnished in reference to the cost of replacing?

A. Under specific losses, yes.

Q. What offices are provided for in the By-Laws of the American Central Insurance Company?

A. President, Vice-President and Secretary.

Q. And what are the salaries—the aggregate salaries of those three officers?

A. $22,100.

Q. Does your company do business throughout the United States?

A. In all states of the United States; yes.

Q. Do business in Canada?

A. In the western provinces.

Q. Now, the experience of your company in each state is kept separately, is it?

A. Yes, sir.

Q. That is, your company knows whether or not it is doing business at a profit or a loss in each State?

A. Yes, sir.

Q. And the rate that you are permitted to charge in each State differs, does it not?

A. Yes sir.

Q. In the State of Missouri, for instance, during the years beginning 1913, including that year, and to 1917, [fol. 3193] including that year, what has been the general average of your loss ratio?

A. I do not recall the average.

Q. Wasn't it sixty-three per cent?

A. I can't remember the figures, Mr. Leahy; I have not refreshed my memory on it.

Q. You remember during that period of time what is the general average per cent of the cost of doing business?

A. You mean of my company?

Q. Yes, of your company?

A. The average for that five years is 39.9 per cent.

Q. And .9 per cent? What proportion of that 39.9 per cent, or what per cent of that 39.9 per cent do you charge to home office expenses?

A. Eight per cent.

Q. Eight per cent? Now, what do you mean by "Home office expense"?

A. Rent, clerk hire, officers' salaries, and incidental office supplies that are used only in the home office.

Q. Printing?

A. Printing; insurance on our furniture and fixtures; bonds for office employees.

Q. Telephones, and all things necessary?

A. Yes, all incidental office expenses.

Q. Now, Mr. Chapman, is it the custom of your company to give credit in the State of Missouri to the amount of interest earned on what is known as "the unearned premiums"?

A. Yes, that is accredited to every state.

Q. Now, how do you determine how much you will credit, for instance, in the State of Missouri, or the State of Illinois?

A. We take the ratio of the premiums in the State that bears to the total premium income of the company, and use [fol. 3194] that ratio to apportion the interest earnings of the company.

Q. Well, now, with reference to, for instance, the earnings on your capital and surplus, you credit Missouri with any part of those earnings?

A. No, sir.

Q. You do not?

A. No.

Q. Why not?

A. We have never considered that the capital and surplus was wholly invested in any one State.

General McAllister: I don't know that I understand you. You say you do not in Missouri, for instance, give credit for any part of the earnings on your capital and surplus?

Mr. Leahy: For instance, your bonds, and your stocks, or real estate, if any?

A. We have never—we never carry a separate account for the earnings on capital and surplus; we treat that in our premium reserve. The interest earnings are accumulated, not for any particular State; we apportion them in a statement.

Q. You do apportion them to each State?

A. We take the interest earnings—the interest earnings of the company are not divided as to capital and surplus or investments; we take the total interest income of the company.

Q. Well, that is what I mean.

A. Yes.

Q. For instance, your capital is invested in bonds, or it may be invested in real estate; now, if that earns something do you credit each state with a certain proportion of that?

A. We credit each State with a proportionate part of the total interest earnings.

[fol. 3195] Q. Whether it is on capital, or surplus, or premiums, or what?

A. Exactly.

Q. Now then, how much do you credit, for instance, Missouri with of that earned interest?

A. On the 1917 is the only figure I recall—about five per cent.

Q. Well, how do you determine that?

A. The premium income of Missouri was about five per cent of our total premium income.

Q. And then you credit on your earnings of capital and surplus and premiums to each particular State the same per cent of those earnings as the premiums earned in that State bear to all the premiums?

A. To the total premiums.

Q. Now, after, for instance, the conflagration that occurred in San Francisco in 1906, was it necessary, or did your stockholders pay in anything to the company?

General McAllister: That is immaterial.

Mr. Leahy: The only purpose of that, may it please Your Honor, we have made a showing heretofore that in addition to the expenses—the actual expenses—that the Insurance Commissioners throughout this country have advised the insurance companies to add five per cent for conflagration losses, and we desire to show that they, in many instances, notably in Boston, and in Chicago, and in San Francisco, many of these companies were entirely wiped out, and those that remained, it was necessary for their stockholders to pay a new capital, showing the great hazards of this business. In other words, that we are entitled not to operate at a loss, but we are entitled to operate at a profit larger than the ordinary and less hazardous businesses.

[fol. 3196] Judge Revelle: We also want to show, Your Honor, in that connection, this statute under which we are proceeding specifically requires the Department, or any reviewing authority, to take into consideration in fixing rates this conflagration hazard. We expect to follow this up by showing just what is meant by conflagration and to show that this five per cent that is recognized in the insurance world and by Insurance Commissioners as being necessary for that purpose is, in point of fact, a reasonable amount and necessary in order to meet these extraordinary fires which are not taken into consideration under ordinary conditions and under ordinary rates.

Mr. Leahy: And cannot be taken into consideration.

Judge Revelle: Yes. And we think perhaps the best proof of that is to show what resulted to a company after a conflagration, and the amounts that they had to pay in order

to meet their conflagration liability, in addition to the funds that had accumulated for that purpose, as tending to show that the amount that had been setting apart for conflagration hazard was not sufficient for the purpose of meeting the obligation.

General McAllister: That is not within the purview of this application, or the application made to the Commissioner, or of this proceedings. It is not an element in the increased cost, which is the basis of this application and, therefore, is wholly immaterial.

The Commissioner: You say it would not be an element in the increased cost?

General McAllister: That is, as applied for in this proceeding.

Judge Revelle: Your Honor, our application is predicated not merely upon the allegations and the contention that the [fol. 3197] cost of conducting the business has increased since the outbreak of the war, but also upon the theory which is mentioned by the statute, that during the past preceding period of time for five years, that the income has not been sufficient for the purpose of meeting the liabilities and providing a reasonable profit. Our contention is that the conflagration hazard is a liability, an ever constant liability, and it is one that the law recognizes as such, and we want to show now what is a reasonable amount to be added to the average rate that is necessary to meet that additional liability and hazard that is recognized by law.

The Commissioner: I will overrule the objection.

To which ruling by the Commissioner, the Respondent, by his counsel, then and there excepted at the time and still excepts.

Mr. Leahy: Will you read the question please?

Q. (Read by reporter.) Now, after, for instance, the conflagration that occurred in San Francisco in 1906, was it necessary, or did your stockholders pay in anything to the company?

General Gose: Just a moment. I understand that you expect to take up each individual company represented in this hearing and show the same facts from each individual company that you are asking for from the present witness on the stand?

Judge Revelle: No, we haven't made any such a statement as that at all.

General Gose: Then I object, for the reason that one individual company would furnish no basis upon which to base an estimate of the necessary amount to be added for such purposes.

Judge Revelle: That would not go to his competency.

[fol. 3198] The Commissioner: That would not go to the competency of the witness. It might not have much probative value, but I will overrule the objection on the competency of it.

To which ruling by the Commissioner, the Respondent, by his counsel, then and there excepted at the time and still excepts.

The Witness: Will you read that question again?

Q. (Read by reporter.) Now, after, for instance, the conflagration that occurred in San Francisco in 1906, was it necessary, or did your stockholders pay in anything to the company?

The Witness: Following the San Francisco fire the company increased its capital from one million to two by selling a million dollars' worth of additional stock for two million dollars to supply the one million dollars added capital, and one million dollars to surplus.

Mr. Leahy: Was that necessary by reason of that fire?

A. It was. The loss on that fire would have absorbed more than the surplus; did absorb more.

Mr. Leahy: That is all.

Cross-examination by General Gose:

Q. Mr. Chapman, you say that your estimate on the increased cost of doing business, particularly the increase in the cost of materials, was based upon certain estimates furnished you by contractors who had made estimates upon the replacing of certain losses?

A. Yes, sir.

Q. How many estimates did you have?

A. You mean as to a particular loss?

Q. No, sir. Well, yes, as to any particular loss how many estimates did you have?

[fol. 3199] A. Well, that varied, sir; in some cases we had the estimate of two contractors, and sometimes three.

Q. Now, how many of those estimates did you examine with a view to ascertaining the increased cost of material?

A. I don't remember that I could—I don't think I could give the number of losses that I actually investigated, but simply compared the estimates with the cost of construction of similar buildings in prior years.

Q. Well, how many did you examine with a view to making that comparison?

A. I don't remember the number, sir.

Q. At the time you made this comparison did you have before you the estimates of the previous years?

A. Our files disclose the estimates.

Q. Yes, but did you have them in front of you at the time and compared the two; for instance, compare the price of brick in the prior year with the price of the present estimate that they made, and so on down the line in regard to materials.

A. I did in one loss, yes, sir.

Q. In one loss?

A. Yes.

Q. Where was that, Mr. Chapman?

A. That was the Saxon Motor Car loss at Detroit, Michigan.

Q. Detroit, Michigan?

A. Yes, sir.

Q. Estimate made by a Michigan contractor?

A. Michigan contractor.

Q. You say from the years 1913 to 1917 that the general average of the cost of doing business in Missouri of your company was .329 per cent?

[fol. 3299] A. Yes, sir. Pardon me, I did not understand that that was the question, as to Missouri. Our general average expense, which we treat for all states, was .329.

Mr. Leahy: Yes, that was the question.

General Gose: Do you know what it was in Missouri?

A. No, sir.

Q. What is this document, Mr. Chapman?

A. That is the Commissioner's form, annual statement, filed in Missouri by the American Central for the year December 31, 1917.

Q. Is that the statement of your company?

A. Yes, sir.

Q. Did you sign that statement and swear to it?

A. I did, sir.

Q. That is the statement filed by you in the year—at the close of the year 1917?

A. Yes, sir.

Q. Upon all your business?

A. Yes, sir.

Q. On page 3 of that statement, Mr. Chapman, what do the figures and items there represent?

A. Disbursements.

Q. Does that include all the disbursements made by the company during the year 1917? That is presumed to cover all the disbursements?

A. Yes, sir.

Q. Your company made during the year 1917?

A. Yes, sir.

Q. Now, the first item shows the losses, that is, the actual amounts paid policyholders during the year 1917? That is correct? That is what it shows there?

A. Yes, sir.

[fol. 3201] Q. Now, that item would not be—would not enter into or become part of the home and departmental expense, would it?

A. No, sir.

Q. The second item is salvage?

A. Is what?

Q. Salvage?

A. Yes, sir.

Q. And the third item is re-insurance received—(counsel consults with witness) (question resumed). The second and third items added together and subtracted from the first item give you the net losses paid?

A. Yes, sir.

Q. Now, that does not in any way enter into or become part of the home or deparmental expenses, does it?

A. No, sir.

Q. The loss adjustment expense, number five, now do you add that into the sum of home or departmental expenses, which is the basis upon which you pro-rate Missouri's part?

A. No, sir.

Q. That item doesn't enter into it, does it?

A. No, sir; it is a part of the losses.

Q. Now, item six is agents' compensation, including brokerage; and item seven is agents' allowances; those two total $432,677.93; does that enter into it?

A. No, sir.

Q. Or become part of the departmental or home expense which Missouri has to contribute a pro-rata part?

A. No, sir.

Q. Under item eight you have field supervisor expenses, subdivided into (a) salaries of field men; (b) expenses of [fol. 3202] field men; (c) executive traveling expenses of other than field men; is Missouri charged with any part of those disbursements?

A. Yes, sir. If you will let me add to that—no, sir; Missouri is charged with the actual expenses of that under "Expended in Missouri," traveling and special agents expenses for Missouri are charged to Missouri.

Q. Yes, but in the expense account of Missouri, isn't that provided for specifically and definitely as part of Missouri's expenses?

A. Yes.

Q. In other words, you would not include that, any part of number eight, as a proportion of home and departmental expenses charged under item five in your report of "Underwriting by Classes?" In order to make it a little clearer, Mr. Chapman, I ask you what the sheet is which we now hand you?

A. That is a form of "Underwriting Experience by Classes" for Missouri, that we filed with the Missouri Insurance Department.

Q. And that particular sheet is the one which you filed at the close of December 31, 1917, is it not?

A. Yes.

Q. In other words, no part of item number eight enters into or becomes part of the expense that is pro-rated to Missouri under item number five of expenses upon the sheet "Underwriting Experience by Classes?"

A. I am not familiar with item eight of this sheet here. Let me see——

Q. The one we were talking about.

A. —before I answer that question. The field supervisory expense is not a part of the home office or departmental expense.

Q. Then number eight does not enter into or become part [fol. 3203] of the charge made to Missouri under item five of expenses as shown on the sheet of "Underwriting Experience by Classes?"

A. No, sir.

Q. That is right. Item number nine on page 3 of "Disbursements" shows salaries and fees of directors, officers and clerks, does it not?

A. Yes, sir.

Q. Now, of that Missouri pays a pro-rated part, is that correct?

A. Yes, sir.

Q. So that is the first item appearing on page 3 of your annual report of which Missouri pays a pro-rata part?

A. Yes, sir.

Q. Number ten shows rents received by the company for rent of the company's own buildings, does it not?

A. That is not rents received, that is rents expended.

Q. I beg your pardon. I mean for rents charged——

A. Yes.

Q. —against the company for use of its own buildings?

A. Yes, sir.

Q. That is true, is it not?

A. Yes, sir.

Q. Now, Missouri pays its pro-rata part of that?

A. Yes, sir.

Q. Item number 11 represents disbursements for furniture and fixtures, including rent of and repairs to the same; Missouri pays a pro rata part of that?

A. Yes, sir.

Q. Number twelve and thirteen—well, number twelve represents maps—disbursements made for maps?

A. Yes, sir.

[fol. 3204] Q. Including corrections?

A. Yes, sir.

Q. Number thirteen represents inspections and surveys, including Underwriters' Board and Tariff Associations?

A. Yes, sir.

Q. Now, that is charged specifically, is it not, in the Missouri report of expenses on the "Underwriting Experience by Classes," is it not? Look down there and see, "Rating Bureau Inspections, Surveys, Protective Department for Fire Prevention Expenses."

A. That is charged specifically for the Missouri inspections. There are other——

Q. Yes, I understand.

A. —supervisory department that enter into the general——

Q. Yes, sir; but in making your charge of item number five for Missouri's pro-rata part of home and departmental expenses no part of number twelve—items twelve and thirteen, under "Disbursements" in your annual statement, would be a part of that home and departmental expense, would it?

A. Twelve and thirteen?

Q. Yes, sir.

A. Yes, it would.

Q. Haven't you already charged that specifically under four, "Underwriting Experience by Classes?"

Judge Revelle: If the Commissioner please, I want to make this suggestion that it occurs to me these inquiries are very misleading in that they are predicated upon two statements which relate to entirely separate and distinct matters; that the two statements in no sense conform to each other, one of them being a statement that is prepared under the Missouri Rating Act, and prepared with a view [fol. 3206] to the provisions of that Act, and for Missouri business alone; whereas the other statement is a statement that relates to the entire transactions of the company throughout the country, and that it is impossible to take the two different sheets which call for different character of information and a different segregation of items and use the one for comparison with the other. The annual statement is not segregated as to Missouri, nor does the annual statement, which is the blank which is prepared by the Insurance Department, conform in its segregations and divisions of items to that which is required under the Rating Act, and which he is inquiring and trying to predicate a comparison upon. They are entirely distinct and a different segregation is provided for. In the one, for instance, the Missouri Rating Act will require on this one a certain segregation; when they make their annual statement items will be bunched under one segregation there, that under this they are not bunched, but are made specifically, and the comparison is only confusing and not in any sense enlightening.

The Commissioner: Are you going to put them both in evidence?

General Gose: Yes.

The Commissioner: I suppose they will show if those have both been put in evidence.

General Gose: They cannot, unless we separate them. That is what I am trying to get at to show exactly.

The Commissioner: I am inclined to allow you to proceed in your own way.

General Gose: This statement shows, Your Honor, all of the money they have expended; it includes——

The Commissioner: Now, does that? Does this one include all the money they have expended all over the United States?

[fol. 3206] **Judge Revelle:** Yes, sir.

The Commissioner: And then the other includes money they have expended in Missouri?

Judge Revelle: That is right.

General Gose: Absolutely.

Judge Revelle: But under an entirely different——

The Commissioner: Yes.

Judge Revelle: —different form and segregation for items.

The Commissioner: Yes, I see. I will allow you to proceed in your own way, and then they can show that difference.

General Gose: Well, in order that Your Honor, may understand us, in the sheet of "Underwriting Experience by Classes," they charge Missouri with so much money as its pro-rata part of the home and departmental expense——

The Commissioner: I get you.

General Gose: Now, under "Disbursements" every item——

The Commissioner: You are talking about now which one of these sheets? The Missouri sheet——

General Gose: No. "Disbursements" of "Underwriting Experience by Classes" sheet is a Missouri sheet.

The Commissioner: Yes.

General Gose: Now, on the Missouri sheet they charge up Missouri's expenses.

The Commissioner: Yes, sir.

General Gose: Certain of those expenses are charged definitely.

The Commissioner: Yes, sir.

General Gose: For instaance, all commissions paid in Missouri are charged definitely to Missouri.

The Commissioner: Yes, sir.

[fol. 3207] General Gose: All salaries and expenses paid Missouri agents and adjusters are charged to Missouri.

The Commissioner: Yes, sir.

General Gose: All taxes and licenses and fees paid in Missouri are charge- to Missouri under their particular names.

The Commissioner: Yes, sir.

General Gose: Rating Bureau inspections, surveys, protective department and fire prevention, that is charged under its specific head.

The Commissioner: Yes, sir.

General Gose: Then they have a general charge of home or departmental expenses, number five—it appears as item number five under "Expenses charged to Missouri," and then number six, "Other expenses charged to Missouri," now, their annual report shows all the disbursements which the company has made. Item number eight, for instance, in the annual report under "Disbursements," salaries of the—supervisor salaries, supervisor expenses rather, for all of the United States appears under that item number eight. Our endeavor is to separate in the disbursements the items of which Missouri has paid a pro-rata part only.

The Commissioner: I see.

General Gose: Consequently, if the items under number eight have been charged specifically in Missouri's sheet of "Underwriting Experience by Classes," then it ought not to be and could not be part of the pro rata which it pays under item five.

Judge Revelle: Well, I have no objection at all to his bringing it out or proceeding in his own form. My objection was merely this, it is confusing the record in this, that it is using two different sheets which portray entirely different segregations, and asking the witness for a statement [fol. 3208] using the two for different purposes, when they do not even purport to include the same items. Now, we do not object to their showing just exactly what proportion of

these expenses is specifically charged to Missouri, and by a specific charge I mean such as they have segregated Missouri from the rest of the State. In other words, where they have not made an apportionment, as I have insisted, this witness doesn't know whether everything is segregated except the home office and departmental expenses. Now, my only objection is to having the record in a confusing form by using one blank report prepared by the Missouri Department, which relates to one thing, and provides its own segregation, and using another blank which is prepared not only by the Missouri Department but by the departments of the United States and agreed upon by the various departments, which is made for an entirely different purpose, and which contains an entirely different segregation and different classes, and these companies are required to make these reports by the departments, yet they are for entirely different purposes, and one item in one for one purpose is included within a general class, whereas in the other statement, by requirement of the department, is included in another class, and my sole objection to it is, it is merely confusing.

Genesal Gose: Your Honor, items of home and departmental expenses cannot be confusing.

The Commissioner: Well, that is a matter of argument as to whether or not it is.

General Gose: What I mean by that is this, that we are attempting to show and to get the items out of the disbursements, and the only way in the world which we can get it is from this annual statement. They file no other statement showing simply home and departmental expense items. In other words, we are trying to ascertain from this witness [fol. 3269] what he includes in the items, "Home and Departmental Expenses," of which Missouri is charged a pro-rata part.

Judge Revelle: I have no objection in the world to his showing that. I was merely objecting to what struck me—perhaps I am wrong—as being such a round-about way and confusing way of arriving at a very simple proposition.

The Commissioner: I will overrule the objection and let him proceed.

To which ruling by the Commis-ioner, the Relators, by their counsel, then and there excepted at the time and still except.

General Gose: Now, Mr. Chapman—will you read that question?

Q. (Read by reporter.) Yes, sir; but in making your charge of item number five for Missouri's pro-rata part of home and departmental expenses no part of number twelve—items twelve and thirteen, under "Disbursements," in your annual statement, would be a part of that home and departmental expense, would it?

The Reporter: And his answer to that question was, "Yes, it would."

General Gose: Do you still say that that would be a part of item five charged against Missouri in "Underwriting Experience by Classes?"

A. Yes, sir.

Q. Well, if that is true why is it that it is charged in item number four under expenses of "Underwriting Experience by Classes?" You have there, "Rating Bureau, inspections, surveys, etc.," charged in a definite and specific sum. Now, if it be true under number four that it is charged in a definite and specific charge, why would you charge it again under item number five?

A. My construction of this blank is that it calls for spe-[fol. 3210] cific Missouri expenses in these particular items.

General Gose: Yes, sir.

A. There are other items of a similar nature applying to the entire country of which Missouri is a part——

Q. Yes.

A. And the expenses of those other items is apportioned to Missouri as well as to other States.

Q. Well, now, illustrate that for instance, will you please?

Judge Revelle: Will you let me ask one question just for the purpose of showing——

General Gose: Yes.

Judge Revelle: You take, for instance, on your adjustment and field supervisory expenses, you make a specific charge on that in one place, do you not?

A. You mean on this blank?

Q. No, on your Missouri blank. That is, you charge the expense of that generally and specifically to Missouri?

A. Yes.

Q. Such expenses as you owe to—in that particular case in connection with the adjustment and filed supervisory expenses?

A. Yes.

Q. You charge that specifically to Missouri?

A. Yes.

Q. In that same connection isn't there this kind of a field supervisory and adjustment expense that is not included in that specific charge, but is included in the home office and departmental expenses, for instance, this kind, say you have a field supervisor that his services are limited entirely to Missouri, you charge that as a specific charge against Missouri, don't you?

A. Yes.

[fol. 3211] Q. Now, then, if you have a general field supervisor who works out of your home office—and you have such?

A. Yes.

Q. You have those general officers supervising all of your more local offices, have you not?

A. Yes.

Q. Now, when you go to charge the salary of those general supervising men, and expenses of those general supervising men, who travel all over the country, then you charge that expense to the home office expenses?

A. Yes, sir.

Q. Do you not?

A. Exactly, yes sir.

Q. And isn't that part of those specific charges that you have made to Missouri which applies not merely to Missouri, but the entire territory where you do business that you include in your home office and administrative experience?

A. Yes, sir.

General Gose: Now, to put it in a different way—will you mark this?

(Document marked for identification as requested, Exhibit A) and to be found copied at length in attached "Exhibit Volume" on pages 1 to 25, which exhibit volume is hereby expressly referred to and made a part of this Bill of Exceptions.

General Gose: I hand you now the annual statement of the American Central Fire Insurance Company of St. Louis, Missouri, for the year ending December 31, 1917, marked Exhibit A, being the same annual statement to which we have referred heretofore, and will ask you to turn to page three and call off the items on that page that represent the total departmental and home expenses with which Mis-{fol. 3212} souri has been charged a pro-rata part?

A. By number?

Q. Call them off specifically and state what they are?

A. Item 8 C, executive traveling expenses of others than field men; 9, salaries and fees directors, officers and clerks; 10, rents; 11, furniture and fixtures, including rent of and repairs to same; 12, maps, including corrections; 13, inspections and surveys, including Underwriters' Boards and Tariff Associations; 14, Federal taxes; 16, postage, telegraphs and telephone exchange and express; 17, legal expenses, excluding legal expenses on losses; 18, advertising and subscriptions, printing and stationary; 20, miscellaneous items, auditors' fees, premiums on surety bonds, premiums on insurance; 23, paid stockholders for interest on dividends; 26-C, stocks; 26, gross loss on stocks, gross loss on sale or maturity of ledger assets, stocks for Schedule D; 27, gross decrease by adjustment in book value of ledger assets, bonds per Schedule D.

Q. Now, then, in estimating the proportion of home and departmental expenses, as set out in item five on the sheet of "Underwriting Experience by Classes," filed for the year ending December 31, 1917, which we herewith hand you and which is marked Exhibit (?)——

(Said document was here marked as Exhibit B for the purposes of identification) and is found copied in full in attached "Exhibit Volume" on pages 25 to 28, which Exhibit Volume is hereby expressly referred to and made a part of this Bill of Exceptions.

Q. (Continuing:) ——Exhibit B, you have included all of the items which you have just named on page three under {fol. 3213} "Disbursements" of Exhibit A, being your annual statement?

A. Will you read that question?

Q. (Read by reporter.) Now, then, in estimating the proportion of home and departmental expenses, as set out in

item five on the sheet of "Underwriting Experience by Classes," filed for the year ending December 31, 1917, which we herewith hand you and which is marked Exhibit B, you have included all of the items which you have just named on page three under "Disbursements," of Exhibit A, being your annual statement?

(Consultation between counsel and the witness.)

The Witness: Will you read that question again?

(Question read the second time to the witness.)

The Witness: Yes.

General Gose: Now, item number 27, on page three, of Exhibit A, represents what? Or if I may, let me ask you if it represents this, the decrease in the market value of the stocks which are held by the company?

A. May I see that?

Q. Yes. 27? Read that question.

Q. (Read by reporter.) Now, item number 27, on page three of Exhibit A, represents what? Or if I may, let me ask you if it represents this, the decrease in the market value of the stocks which are held by the company?

General Gose: From year to year? Add that to the question.

A. I believe the figures represent the amortization of certain bonds.

Q. Now, please explain that?

A. I don't know that I can.

Q. Well, just tell what it represents on your books; what [fol. 3214] it means on your books? You have shown it as a loss there or expense of doing business. (Witness hesitates.) Well, does it mean this, Mr. Chapman, that in 1916 the bonds or stocks which the company had upon its books were of a certain value—market value—and this year there is a different or decreased market value?

A. No.

Q. Does not mean that?

A. Does not mean that.

Judge Revelle: May I ask you a question, Mr. Chapman? Do you really know what that represents?

A. I do not.

General Gose: Now, then, I understand you to say, Mr. Chapman, that you take the ratio of the expense or premiums in Missouri bears to the total premiums received everywhere and upon that proportion or percentage you calculate the expenses, pro-rata part, to be charged to Missouri; is that correct?

A. I do not think I quite understand the question. Will you repeat it?

Q. The ratio of the premiums in Missouri bears to the premiums received all over the United States, or everywhere you do business, forms the basis for the apportioning of the expenses to be charged to Missouri?

A. Of the home office expenses, yes, sir.

Q. Yes, sir; of the home office expenses?

A. Yes.

Q. Now, then, you did credit, and you do in your annual reports, credit to Missouri its pro-rated part of the interest on unearned premiums for each year?

A. Yes, sir.

Q. On the same basis?

A. Yes, sir.

Q. And you do credit to Missouri its proportionate part [fol. 3215] of the earnings on capital and surplus upon the same basis?

A. We do not segregate the capital and surplus from the investment account. We take the whole interest from all interest-bearing investments and apportion that to Missouri on the basis that the Missouri premiums bear to the total premium income.

Q. Now, then, in that credit which appears as Item X—Item double X—put it Item XX, in Exhibit B, Missouri does not receive any credit for rents received by the company for its buildings, does it?

A. Read that question please.

Q. (Read by reporter.) Now, then, in that credit which appears as Item X—Item double X—put it Item XX, in Exhibit B, Missouri does not receive any credit for rents received by the company for its buildings, does it?

General Gose: Of company property?

A. The company doesn't own the buildings. It receives nothing in the way of rents.

Q. Well, some insurance companies receive rent from property which it owns, does it not?

A. I suppose so.

Q. Well, under "Disbursements," you have charged "Rents for occupancy of company buildings, $11,334.47," as appears by Item 10 on page 3 of Exhibit A?

Judge Revelle: That is rent paid.

The Witness: That is disbursements.

General Gose: That is disbursements? Now, have you not—well, you disbursed that to the company, did you not? That is the company's own buildings, is it not?

A. No, sir. This says rents, including so much for rent only for company's occupancy of buildings.

[fol. 3216] Mr. Leahy: The company has no building.

A. We have no building. That answer we gave of the rents were expended—are carried out in the extension.

General Gose: Your company owns no buildings at all?

A. No.

Q. Has, it any real property at all from which it receives any income?

A. No, sir.

Q. Have you any company property from which you receive rents?

A. No, sir.

Mr. Leahy: No real property?

A. No, sir.

General Gose: That doesn't include any premiums on perpetual risks, does it?—the Item double X referred to in Exhibit B?

A. We have no perpetual risks.

Q. You have none?

A. No.

Q. Some insurance companies do, do they not?

A. Yes, sir.

Q. That doesn't include anything received from "Conscience Fund," does it—Item double XX in Exhibit B?

A. I don't know.

Q. It doesn't include any interest on deposits, does it? Do you know about that, Mr. Chapman?

A. On deposits?

Q. Yes.

A. I don't know.

General Gose: I expect we had better adjourn until two o'clock; it is now after twelve.

The Commissioner: Suit yourselves.

[fol. 3217] Judge Reveley: Can't we get back at 1:30?

General McAllister: Yes, I think so.

The Commissioner: Adjourn then until 1:30.

Thereupon, to wit, at 1:30 p. m. on said Thursday, the 19th day of September, 1918, pursuant to the recess taken for the lunch hour, the further hearing of testimony in said cause was resumed, as follows, to wit:

B. G. Chapman, Jr., the witness on the stand at the hour of the taking of the noon recess, was now recalled to the stand, and his cross-examination was resumed by counsel, as follows, to wit:

Cross-examination by General Gose:

Q. Mr. Chapman, what is the average interest earning of the company upon its capital and surplus and general assets?

A. I do not recall the exact figures; I think it is four and one-half per cent.

Q. Ranging anywhere from four to four and one-half?

A. Four to four and one-half.

Q. How many cities in the State do you pay municipal taxes to?

A. I don't know.

Q. There are no records from which this exact data could be obtained, are there, for insurance companies as a whole?

A. For municipal taxes? I think there are.

Q. Where would we find those? I mean for Missouri?

A. I think those are in the laws, taxes and fees published by the "Spectator," aren't they, Mr. Dugan?

Mr. Dugan: I think so.

[fol. 3218] The Witness: Have you a record of the municipalities?

Mr. Dugan: Yes.

General Gose: You do not know? You personally do not know?

A. I don't recall the list of cities.

Q. In your company, personally, Mr. Chapman, what were your losses in the San Francisco fire?

A. Approximately $1,700,00-.

Q. What surplus did you have on hand at the time, do you remember?

A. I don't remember. I was not with the American Central at that time.

Q. Oh; but you do know that your stockholders subscribed a million dollars?

A. Yes, sir; that is a matter of record—two million dollars.

Q. Two million?

A. Two million.

Q. Was new stock issued for that?

A. Yes, sir.

Q. That was an increase then of capital stock?

A. Yes, of capital stock.

Mr. Leahy: Increase in the capital of a million?

A. Yes, sir.

Q. But not two million?

A. The capital was a million, increased to two. That second million capital sold for two million dollars.

General Gose: But the additional stock subscribed after the San Francisco disaster was one million dollars; that is correct?

A. Yes, sir.

Q. You say about eight per cent of the home office expense—about eight per cent of your 39.9 cost of doing business, is eight per cent?

[fol. 3219] A. Yes.

Q. Eight per cent home office expense?

A. Eight per cent home office expense, yes, sir.

General Gose: I believe that is all for the present, Mr. Chapman.

Redirect examination by Mr. Leahy:

Q. Mr. Chapman, you were interrogated heretofore about certain items appearing on the report filed with the Insurance Department by the American Central—did you personally prepare that report?

A. I did not.

Q. Have you any explanations to make with reference to your answers to the questions propounded by the Attorney-General?

A. Yes, I recall that I answered two questions erroneously. The Item 23—may I see the statement?

General Gose: Sure (handing statement to witness).

A. Item 23 is, paid stockholders for interest on dividends, that is not a part of the home office expenses and I believe I said that it was; I believe I listed that as one of the items.

Mr. Leahy: Yes.

A. Now, Item 26-e, I do not recall whether I included that as home office expense, but if I did it was an error—that was the loss on the sale of ledger assets, which manifestly is not an expense; it is an investment account. The Item 27-B was, as I thought it was, the amortization of bonds, and I can explain that.

Q. Explain that now please?

A. We have certain bonds that we bought at a premium and we charge off arbitrarily a certain fixed amount per [fol. 3229] year, so that just before maturity those bonds stand on our books at par.

Q. Well, that is——

A. That is not an item of expense, that is an investment item.

Q. Yes.

Judge Revelle: May I ask a few questions?

The Commissioner: Certainly.

Judge Revelle: Mr. Chapman, you stated, I believe, that your average expense throughout the United States was thirty-nine and what?

A. Nine-tenths.

Q. Nine-tenths? Now, your company has—it is a company with a large premium income, isn't it?

A. Yes, I suppose.

Q. That is, I mean comparatively speaking, with the average number of companies doing business in the United States?

A. Yes, sir.

Q. Is it, or is it not a fact, that the expense of doing business, that is, when giving that expense in the way of percentage of the premium income, if that percentage is not

greater with companies that have smaller premium incomes? In other words, isn't the percentage, for instance of home office expense to the total premium income always greater in companies with smaller incomes, than with companies with a larger income?

A. That is the experience; yes.

Mr. Leahy: That is a mathematical certainty.

A. Yes.

Judge Revelle: Now, the expenses that you charge to Missouri, except the home office expense, or that part of the [fol. 3221] home office expense that is apportioned to Missouri, are not all of those expenses incurred in Missouri and paid to people living in Missouri?

A. Yes, sir.

Q. Or rendering services in Missouri?

A. Yes, sir.

Q. Now, I believe you explained perhaps in response to a question of mine that different items, as for instance, that the adjustment and special supervisor item, that you segregated those whenever the expense is purely and strictly a local expense?

A. Yes, sir.

Q. But that when you have general officers or general employees who also render some services in Missouri; likewise rendering services in other states that you take that part of that expense, even though it be an adjustment in field supervisory expense, and charge that to the home office expense?

A. Yes, sir.

Q. That is true not only of the one expense item I have mentioned, but that is true of the various expense items, is it not?

A. Where they are not specifically charged to a State they are apportioned among the States.

Q. And when they are apportioned among the States they are included in the home office or administrative experience?

A. Yes, sir.

Q. Expense?

A. Yes, sir.

Q. Now, in any of those instances where you make specific charges of expense to the State of Missouri, do you in any instance again include that same expense, either in home

office expenses, or in any other column or statement of expenses?

A. No.

[fol. 3222] Q. The stock that was sold by your company following the Frisco conflagration and which sold for two dollars for each dollar's worth of stock, was all subscribed for and taken by the then stockholders, was it not?

A. I do not know that.

Q. Now when in your statement of earnings and income, do you, or do you not, include in that your income and earnings from every source whatever that comes from investment of any and all kinds?

A. Yes, sir.

Q. So I understand then by that, that by earnings you mean that you have accounted for all interest that you have received on monies in banks, as well as money invested in stocks and bonds, or otherwise invested?

A. Yes, sir.

Q. You include, in other words, every source of income that you have, except your premium income?

A. Yes.

Q. In the item of earnings?

A. Item of earnings. I might add, Judge Revelle, that that schedule appears on page 2, and is itemized—page 2 of the annual statement.

Q. You stated, I believe now, that your expense ratio was 39.9 throughout the United States; I will ask you if approximately that represents your relative expense ratio in the State of Missouri? In other words, is there any material difference in your expense ratio in Missouri as compared with your average expense ratio throughout the country?

A. I should say that our expense ratio in Missouri would be higher than that because being a Missouri company the item of taxes which we pay is greater than is paid by com- [fol. 3223] panies domiciled outside of the State. You see a Missouri corporation doesn't pay a premium tax, but we pay a property tax, which is, and has been, in excess of the smaller premium tax we might have had to pay.

Q. Now, if you were to charge then to Missouri the whole of that tax, do you apportion that tax with other taxes?

A. Our capital, our property tax, we do apportion that.

Q. You apportion that?

A. Yes.

Q. If that were charged wholly to the State of Missouri that would bring your expense ratio in excess of 39.9, would it not?

A. I think it would.

Q. I believe you stated that you personally did not prepare that statement?

A. I did not.

Q. Where was that statement prepared?

A. It was prepared in our office.

Q. Here in St. Louis?

A. In St. Louis.

Q. Who actually prepared it?

A. Our cashier, who is assistant secretary, and our auditor and his assistant.

Q. And merely brought to you for signature as an officer of the company?

A. Yes, sir.

Q. May I ask if your functions—your actual work in connection with the American Central is not more in connection with the underwriting part of it, than the really executive part of it?

A. Well, it is about equally divided between the two.

Q. About equally divided? That is all.

[fol. 3224] Recross examination by General Gose:

Q. Now, Mr. Chapman, what did you say the principal officers of your company were? The president, vice-president and——

A. Who is also secretary and assistant secretary.

Q. President and vice-president?

A. Secretary and assistant secretary.

Q. The vice-president is secretary.

A. Is secretary; he occupies a dual position.

Q. What salary do you pay the president?

A. $12,000.

Q. What salary do you pay the vice-president?

A. $6,600.

Q. And what salary do you pay the assistant secretary?

A. $3,500.

Q. Who is your treasurer? Don't you have a treasurer?

A. We have no treasurer.

Q. Who acts as treasurer?

A. The assistant secretary.

Q. Now, how many field men have you operating in Missouri who operate in all other States in which you do business?

A. Who operate in all other States?

Q. Yes.

A. We have only two field men whose entire time is devoted to Missouri.

Q. Have you any other field men who devote a part of their time to Missouri?

A. No, sir.

Q. I believe you told Judge Revelle that interest from [fol. 3225] all sources, or earnings from all sources whatsoever appeared on page 2 of your annual statement?

A. Yes, sir.

Q. Now, then, (showing witness document) would you say that Missouri is credited in your statement of 1917 with the pro-rata part of all interest and earnings upon every character and kind of earnings of the company, or would you say that the credit which you had given Missouri was limited to the interest earned on unearned premiums, and interest earned on capital stock and surplus?

Judge Revelle: That is the only source that an insurance company has.

The Witness: This statement shows that in addition to the premiums the credit is given for the proportionate basis of bonded surplus, capital and reserve.

General Gose: Yes.

A. (Continuing:) Of the company, as it bears to the Missouri business.

Q. Yes. Does that include interest on deposits—accumulated or current deposits?—or are you able to state?

A. I am not able to state positively that it does.

Q. Well, if you had real estate would that be included in the interest earned, or rent from real estate be included in interest earned on capital stock and surplus pro-rated for Missouri?

Judge Revelle: I submit, Your Honor, that would be very enlightening when he says they have no real estate.

Mr. Leahy: They have no real estate.

The Commissioner: Of course, I don't see. You may ask the question as to the insurance companies, but it could not affect this particular company.

[fol. 3226] General Gose: No, it couldn't, but I am simply trying to get at what they include.

A. I would assume—as I stated before, we have no real estate, but I assume it would because my impression is that page of the statement provides for income from rents.

Q. Yes.

A. Or income on real property.

Q. Yes. And you have no perpetual risks, have you?

A. No, sir.

General Gose: I believe that is all, Mr. Chapman.

Judge Revelle: One minute. Mr. Chapman, what, if any, connection is there between your company and the Commercial Union?

A. The Commercial Union owns the majority of the stock of our company.

Q. And exercises, I suppose, supervision over the conduct of the business of the American Central?

A. They have not exercised any supervision so far, Judge Revelle.

Judge Revelle: That is all.

Witness excused.

A. G. Dugan, of lawful age, produced as a witness on the part of the Relators, being first duly sworn, upon examination testified as follows, to-wit:

Direct examination by Mr. Leahy:

Q. What is your name?

A. A. G. Dugan.

Q. Where do you reside, Mr. Dugan?

A. Chicago.

Q. What is your business?

[fol. 3227] A. I am a member of the firm of Dugan & Carr, General Agents, Western Department, Hartford Fire Insurance Company of Hartford, Connecticut.

Q. How long have you been in the insurance business?

A. About thirty-seven years.

Q. And how long have you been one of the managers of the Western Department of the Hartford?

A. Fifteen years.

Q. You have been selected by the insurance companies to have presented to the various insurance departments of this section of the country an application for an increase in rates since the war began?

A. Yes, I have been a member of the committee that has had considerable to do with it in the various States.

Q. Now, Mr. Dugan, this application for this surcharge or increase in rates is to apply only through the period of the war?

A. That is what we have stated to all of these Commissioners that we have had conferences with, it was for the purpose of taking care of the extraordinary increase in expenses, in the cost of doing business, the cost of repairs in case of partial losses, and that it would be discontinued as soon as these abnormal conditions make it possible to discontinue it. In other words, we haven't considered it as a rate matter, more than a temporary surcharge to take care of extraordinary expenses caused and brought about by the war, or because of the war.

Q. Well, what states has this application been made in, so far as you know?

A. Well, I know definitely only as to the Western states. It is now in effect in Ohio, Michigan, Illinois, Indiana, Kentucky, Tennessee, Iowa, Minnesota, North and South Da- [fol. 3228] kota, Nebraska, Colorado, Wyoming, New Mexico—I believe that is all. And I understand that, in fact I know, it is in effect in all the Eastern states and all of the Southern states. I am not quite sure regarding the extreme Western states, as to what is known as the Pacific Coast States, but my understanding is it has recently taken effect there.

Q. Now, take some of the States you have mentioned, for instance, as a comparison between those States and Missouri with reference to the profit made by the companies, what has been the experience of the insurance companies in the State of Missouri, say for the past twenty-five years? Has it, or has it not, been a profitable business?

A. Missouri is considered by the insurance people as one of the most unprofitable States we do business in, and has been for a great many years.

Q. Well, what with reference to Illinois? Has that been profitable?

A. Illinois has been fairly profitable; not so much so as Ohio and Michigan. Ohio has been perhaps the most profitable State in the Western field.

Q. And you say those States have all granted this surcharge?

A. Yes, sir.

Q. Now, what elements, in a summary manner, have made it necessary to apply for this surcharge? What are the items?

A. Well, in a general way it is increased taxes; in the first place, the premium tax, a capital stock tax, a (witness here refers to memoranda)—corporation tax, premium tax, capital stock tax, corporation income tax, excess profits tax, are the new taxes that we haven't had heretofore.

[fol. 3229] Q. Pardon me. Now, you mentioned first the Federal taxes—that has been added?

A. Yes, sir; the Federal taxes are the new taxes.

Q. What per cent of increase is that?

A. Well, they cannot be precisely determined and will vary with different companies, but I believe it will approximate about 3.3 per cent.

Q. What do you say the Federal taxes—you mean the capital stock tax, corporation income tax, excess profit tax, and——

A. (Interrupting.) And premium tax.

Q. And premium tax?

A. Yes, sir.

Q. Now, in doing an insurance business it is necessary, is it not, to have men in the field constantly traveling?

A. Yes.

Q. Well, has there been any increase in the railroad fares?

A. There has been a very sharp increase in railroad fares and Pullman fares.

Q. All incident to this war?

A. All incident to this war.

Q. All of these taxes you mention are really war taxes?

A. Yes, sir.

Q. Now, those taxes that you have mentioned are in addition to the general taxes, are they not?

A. Yes.

Q. And in addition to licenses?

A. In addition to licenses and our ordinary state taxes that we have heretofore paid, and still pay.

Q. And local and municipal taxes?

A. Yes, local and municipal taxes.

[fol. 3230] Q. Now, by reason of the war have salaries been affected in any wise, or the monies paid to employees?

A. Yes, sir; there has been a very sharp increase in the salaries and because of the war it is very difficult to get competent help even at the increased salaries.

Q. What about—are you insurance people ever out anything for printing, or——

A. Yes.

Q. —paper supplies?

A. That is a very important item, is the matter of supplies for agents and the general business. There has been a very sharp increase in the cost paper, and in the cost of——

Q. Printing?

A. —printing.

Q. Well, now, what about—you have bureaus of inspection, have you not?

A. Yes, we have these various State Bureaus—Inspection Bureaus.

Q. And you have your own departments to make maps?

A. And then there are map companies that make the maps.

Q. And then you have fire prevention departments?

A. Fire prevention departments or bureaus.

Q. What about the cost of maintaining these, has it increased since the war began?

A. Yes, sir; all of them; there has been an increase in all of those activities.

Q. Well, now, Mr. Dugan, what percentage of fires are partial losses in dollars?

A. We estimate about seventy-five or eighty per cent.

Q. And what percentage, if any, has there been in the [fol. 3231] increase of materials incident to restoring the property?

A. In April of this year I saw affidavits that were made by prominent contractors in a number of large cities, St. Louis, Chicago, Detroit, St. Paul, Minneapolis, Omaha, and other cities; these affidavits all showed that there had been an increase in the cost of various kinds of materials averaging about fifty per cent.

General Gose: I move that be stricken out as mere hearsay.

A. Well, I personally saw the affidavits. I did not talk to the men who made them.

Mr. Leahy: Well, you made an investigation——

General Gose: Wait just a moment. I am objecting to this evidence and ask it be stricken out as not competent.

The Commissioner: Well——

Mr. Leahy: I was going to amplify his knowledge.

The Commissioner: I will overrule the objection.

To which ruling by the Commissioner, the Respondent, by his counsel, then and there excepted at the time and still excepts.

Mr. Leahy: You made an investigation to ascertain whether or not there had been an increase in the cost of materials, did you?

A. Yes.

Q. And to that end what did you do?

A. We had affidavits prepared by prominent contractors in various cities.

Q. And supply men?

A. And supply men, yes.

Q. And after inquiring from supply men and contractors, and I believe architects?

A. Yes.

Q. You ascertained then that the cost of restoration or [fol. 3232] the cost in the increased cost of materials was about fifty per cent?

A. Yes, sir.

Q. Well, now, this information that you have secured when you were making this investigation, as I understand you, you received from New York, from Detroit, from Chicago, from St. Louis, and from practically all the large cities?

A. Practically all the large cities in the West. I don't think we had any from the East, from New York, but practically all the large cities in the middle West.

Q. Now, have you made an investigation to determine whether or not there has been any increase in the hazard of losses by fire by reason of the extraordinary conditions that exist in manufacturing plants?

A. Yes, I have made an investigation and I am satisfied there has been an increase in the hazard, caused from various factors, chiefly because of the rush of work they haven't the time to keep the factories in the cleanly condition they ordinarily do.

Q. Day and night shifts?

A. Day and night shifts, and inefficient help in some cases.

Q. Well, have you made any investigation to determine whether or not there has been any increase in loss by fire by reason of the alien enemy?

A. Well, that is a very difficult matter to determine. I believe there has been some increase, but just to say how much it would be a difficult matter to determine.

Q. Well, there has been in various parts of this country——

A. There have been in various parts of this country fires which have been attributed to that source.

[fol. 3233] Q. Yes. Where millions of dollars have been destroyed?

A. Where millions of dollars have been destroyed.

Q. And by reason of the extraordinary condition in which business is being done now there is an accumulation of debris and a general inefficiency in the persons employed, which increases the hazard, I believe?

A. Yes, sir.

Q. What, if anything, have you discovered in reference to the increase in the hazard by reason of the over-crowded condition of freight yards, depots, factories and business houses?

A. Well, only in a general way, like I stated before, we cannot tell definitely about those things, but we do know that in times like the present the chances of fire are much greater than in ordinary times when property is better cared for.

Q. Well, what, if anything, did you ascertain on investigation with reference to men trained and skilled in the business of fighting fires going to the army and *and* leaving inefficient men as firemen?

A. Numerous cases have come to my attention where the fire departments are nothing like as efficient as they had been because of the fact that they have inefficient men in the departments to take the places of the more efficient ones who have gone.

Q. What is the cost of doing business in the State of Missouri; what proportion of the premium income is used in doing business?

A. My belief is it is about forty per cent; it varies somewhat with different companies.

Q. Yes, sir.

A. Not exactly the same for each company.

Q. There is about eight per cent of that amount I believe, known as "Home Office Expense?"

[fol. 3234] A. About eight per cent is known as "Home Office or Departmental Expense."

Q. Will you explain that please?

A. That eight per cent takes care of all items of expense which are not chargeable directly to the individual States. For instance, if we know exactly an item of expense has been incurred in the State of Missouri it is charged to Missouri, but there are certain items that are not chargeable to any particular State, and those items I believe aggregate about eight per cent, and that expense is distributed to the various States in proportion as to the premiums of each State bears to the total.

Q. Your company has in addition to the officers, such as president and vice-president and secretary, and so on, managers for certain sections of the country?

A. Yes, the Hartford has three departments; one at Chicago, one at Atlanta, Georgia, and one in San Francisco.

Q. And where is your home office?

A. The home office is at Hartford, Connecticut.

Q. Now, the expenses of those departments that you have mentioned, that is a part of the home office expense, is it?

A. Yes.

Q. Mr. Dugan, how would you define a conflagation?

A. Well, I should say it is an extraordinary fire that is not contemplated in the schedules that are established in

the rating of properties; that is to say, the conditions are unusual and unexpected. We make schedules which, and apply schedules for making rates, which are supposed to cover the ordinary fire, and a good many of those fires are large fires, like the recent one at Owensburg, Kentucky, [fol. 3235] where it destroyed over $2,000,000 of whiskey in warehouses; I wouldn't call that a conflagration, although it was a very large fire. A conflagration is one that is unexpected, like we had in Chicago in 1871, and San Francisco in 1906, and Baltimore, Boston and other places, and those fires are not taken care of or provided for in the ordinary rate making schedules.

Q. And then a conflagration, you would say, is something happening—something that cannot be determed by the law of percentages or averages?

A. That is right.

Q. That is used in the making of rates for the business?

A. That is right.

Q. Now, these conflagrations occur from time to time, do they?

A. They occur from time to time. Within my recollection we have had six or eight. I should say on an average one about every ten years.

Q. Well, now, for instance, the ones that you have mentioned, the one in Boston, do you remember what was the extent of the loss by reason of that conflagration?

A. No, I do not recall the amount of it. I recall it came the year following the Chicago fire, which was in 1871, and the Boston fire was in 1872. The Boston fire was not nearly as bad as the Chicago fire, but I do not recall the extent of it.

Q. Well, do you recollect the extent of the Chicago fire, in dollars?

A. No, I haven't it.

Q. Well, were many of the companies bankrupted by reason of that fire?

A. I was not actively engaged in the business that far [fol. 3236] back, but my understanding was a number of companies failed.

Q. Do you remember whether or not approximately there was $168,000,000 worth of property destroyed by the Chicago fire?

A. I should say there was at least that much.

Q. Do you remember the amount that was destroyed in the San Francisco fire?

A. Oh, very much more than that. I do not recall the figures.

Q. $350,000,000?

A. Yes, $300,000,000 I should say.

Q. $350,000,000, wasn't it?

A. Perhaps; something like that.

Q. Well, now, what — the experience of these various companies by reason of the ever recurring catastrophies, known as "conflagrations"—what, if anything, have the companies done to protect themselves against utter destruction by reason of such catastrophies?

A. Well, they have—I don't quite understand your question.

Q. Have they added anything to what they call their cost of doing business?

A. Why, yes, they have. They are supposed to have an extra premium to take care of that and build up a surplus. That is what the surplus is for, to take care of these extraordinary fires.

Q. They add about five per cent per annum for that?

A. That is what they aim to do, to add five per cent per annum for that.

Q. And the adding of this five per cent was largely caused by the recommendation of the representatives of the States known as "Superintendents," or "Insurance Commissioners."

[fol. 3237] A. Yes, sir.

Q. Now, Mr. Dugan, with reference to the earnings of the company; is Missouri accredited with the interest earned on the unearned premiums?

A. Yes, in proportion to the premiums in Missouri compared to the total premiums.

Q. And what about the earnings on the capital and surplus?

A. That is apportioned in the same way.

Q. Apportioned to Missouri?

A. Yes, sir.

Q. And that is true with reference to all the assets of the company?

A. Yes, sir.

Q. The earnings are apportioned to Missouri in proportion to—in the same proportion as the premium receipts bear to the total premiums receipts?

A. Yes.

Q. And you do that, that is, you apportion these earnings from the capital and surplus to Missouri even though the rating law of this State does not require you to do it?

A. That is my understanding.

Mr. Leahy: That is all.

Cross-examination by General Gose:

Q. Well, the rating law provides that you shall file statements with the Insurance Commissioner answering such questions, and giving such information as he shall request, does it not?

A. I bel-eve it does. I have not read the law recently.

Q. Well, you know that the Insurance Department furnishes you with a blank, or gives you the form of a blank, [fol. 3238] on which it requires you to report the interest on unearned premiums, and the interest on capital and surplus?

A. Yes, that is my understanding.

Q. Now, what is your capital stock?

A. $2,000,000.

Q. $2,000,000? Now, do you remember in 1915 what dividend you paid?

A. No. 1915?

Q. $800,000, wasn't it?

A. I don't recall; I guess that is right.

Q. Do you remember that you added $379,280 to your surplus, besides paying a dividend of $800,000.

A. I haven't those figures with me. I think perhaps they are right.

Q. And as a matter of fact, you paid the same dividend for the last three years—$800,000, haven't you?

A. Yes, the same dividend. I don't remember the amount, but the dividend has been the same for the last three years.

Q. And your surplus was increased in 1916 by $331,253? In 1917 it was again increased by $425,300? Now, what are the salaries of your particular officers, Mr. Dugan? First name your principal officers of the company?

A. The principal officers is the president.

Q. Vice-president?

A. President, two vice-presidents, secretary, and two assistant secretaries.

Q. What is the salary of your president?

A. I don't know.

Q. Do you know the salary of any of the chief officers?

A. No, sir.

[fol. 3239] Q. How many of the States have the rating law?

A. There are very few that have a law which is at all comparable to the one in Missouri; that is, to say, there are few States having a law which gives the State officials the power to say what the rates shall be.

Q. Yes, sir. Now, how many of them are there?

A. To the best of my knowledge, I believe there are only Missouri, Kansas, Oklahoma and Texas, where they have absolute—what you might say, absolute power over that matter. There are some other States like Ohio, Michigan, Minnesota and Wisconsin that have a more limited power as to what the rate shall be.

Q. Now, of the States having a rating law similar to ours how many of them have this surcharge at the present?

A. Well, there is Kentucky, Ohio——

Q. Well, excuse me for interrupting you, has Ohio a rating law like ours?

A. You mean———

Q. As stringent as ours?

A. Well, I should say—I should say there are at least three States that have laws as stringent as yours that have the surcharge; that is Kentucky, Michigan and Minnesota. They are not quite as stringent but still they have the power to have prevented the surcharge if they had chosen to do it.

Q. Now, in regard to these questions which Mr. Leahy asked you in regard to the losses occasioned by double shifts and alien enemy and the increase in hazard, it is not possible for anybody to tell at this time anything about that, is it?

A. No, sir; it is absolutely a surmise; we cannot tell anything definite about it. We only know in a general way fires have been more numerous this year than usual and we think that the cause.

[fol. 3240] Q. Some of it may be attributed to alien enemy acts, some of it to the increased debris and unusual condition?

A. Yes.

Q. Under which they are working?

A. Yes—we cannot tell.

Q. Now, Mr. Dugan, I hand you one of these forms of the report of annual statement to be made by the insurance company, and ask you to turn to page 3, or "Disbursements," and indicate to the Commissioner the items thereon with which Missouri would be charged a pro-rata part? That statement, the form of it, is identical, is it not, with the statement of the American Central Fire Insurance Company introduced in evidence and marked Exhibit A?

A. Yes; yes; Yes.

Q. Now, will you kindly indicate to the Commissioner what items thereon should be charged as home and departmental expense of which Missouri should pay a pro-rata part? You may just designate them by number.

A. I am not sure that I can. I am not a very good witness on information of this kind. These statements are made up chiefly at our home office and sent out to Chicago and we fill in certain figures, their State figures but it doesn't come under my personal supervision and I would prefer not to go into that detail if you can avoid it.

Q. Well, Mr. Dugan, if you do not know, why, that is all we care for.

A. I only know this, that all expense—if we know definitely that it belongs to Missouri, it would be charged to Missouri.

Q. Yes.

A. If we do not know definitely that it belongs to Mis- [fol. 3241] souri it goes into the over-head and Missouri gets its pro-rata part.

Q. You would not be able to take this individual statement and say just what items go to Missouri?

A. No, I would rather not do it because, as I say, I am not familiar with making them up.

Q. Did I understand you to say, Mr. Dugan, that in your investigation of the increased cost of doing business that you had the affidavits of St. Louis contractors?

A. Yes, we had affidavits from St. Louis among others.

Q. How many contractors did you have affidavits from here, do you remember?

A. I don't recall. I think it was two or three perhaps.

Q. All from St. Louis?

A. From St. Louis; yes.

Q. None from Kansas City?

A. I am not quite sure about Kansas City. I am inclined to think we did have one or two from Kansas City.

Q. Have any from St. Joseph?

A. My recollection is we had them from St. Louis, St. Joe and Kansas City, although I am not quite sure about it.

Q. Have any from Sedalia, Boonville?

A. I don't know.

Q. Jefferson City? Any of the interior towns of the State?

A. I don't recall definitely.

Q. As a matter of fact, as I understand you, that this is really not an application for an increase of rates?

A. No. As I said at the outset, we have considered it more in the nature of a surcharge to take care of the [fol. 3242] extraordinary conditions, and that is *is* the purpose of the companies, so far as I know, to remove the surcharge as soon as possible.

Q. In other words, it would not appear——

A. Not appear in the rates.

Q. —in the rates at all, but would be endorsed on the policy?

A. Exactly.

Q. Do you know how many companies have lost money in the State of Missouri in the three years? I mean by that, Mr. Dugan, have you made a personal examination of the records to ascertain?

A. No, sir; I have not.

Q. Have you made a personal examination of the records of your own company—the Hartford?

A. Yes, sir.

Q. How much money did the Hartford Insurance Company lose in Missouri in 1917?

A. I cannot give you that without referring to the record. Its sworn statements show.

Q. Sure. If you have your statement.

A. I have a memoranda here of only one department; it doesn't take in the entire——

Q. Well, that wouldn't be——

A. I don't think I had better read this because it only takes what we call our "Recording Agencies," and we haven't what the sworn statement on file with the Department shows.

Q. Did you lose any money in 1915? I am taking in your entire business now in the State of Missouri?

A. I know. My belief is that we did.

Q. Did you lose any in 1916?

A. I think perhaps we didn't lose any that year, but I don't believe we made any to speak of.

{fol. 3243} Q. Mr. Dugan, did you ever personally now figure out your gain or loss in the state of Missouri?

A. Yes, I have each year. At the end of the year I go over all the States reporting to the Western Department and I cannot, of course, carry all those figures in my head, but I know in a general way that Missouri has been unprofitable for the last—for the last ten years.

Q. Well, now, what would you call unprofitable, Mr. Dugan?

A. That is, the losses and expenses were more than the premiums.

Q. Did you give Missouri any credit for the interest on unearned premiums?

A. So far as our office at Chicago is concerned, we considered simply the underwriting experience.

Q. I believe that in your report from your general office you give Missouri credit, as you testified awhile ago, for unearned interest—interest on unearned premiums, and its pro-rata part of interest on capital stock and surplus; now, do I understand you that when you figured you discarded those items of credit?

A. When I figured I simply figured on the premiums, losses and expenses.

Q. You discarded those items of credit given for the general office?

A. Yes, sir.

Q. Would you say that from 1913 that the Hartford Insurance Company has lost money with the exception of the year 1916?

Judge Revelle: Your Honor, please, while I don't really object to this, I do not see it has very much effect—can have

very much force when the figures are before the commissioner, and when the witness testifies that he has not made a computation such as perhaps is contemplated in determin-
[fol. 3244] ing whether or not they made money, or not. I think the witness has disclosed any information he may have about the matter.

The Witness: I can answer that last question I think very positively, that there has been no profit; we certainly had no profit in Missouri for the last five years, 1913 to 1917.

General Gose: Yes. I believe that is all, Mr. Dugan.

The Commissioner: What is your capital?

A. $2,000,000. It was prior to the San Francisco fire a million and a quarter; after the San Francisco fire they sold $750,000 additional stock—$750,000 additional stock for three million dollars, putting $750,000 of it in capital stock and the balance of it in surplus.

Judge Revelle: What became of most of the surplus?

A. Most of the surplus went to pay the San Francisco loss. In fact, it was obliged to use this and to issue this additional stock in order to have any surplus.

Judge Revelle: That is all.

Mr. Leahy: That is all.

General Gose: If you gentlemen please, we would like to simply permit the stenographer to copy these pages which we have referred to in this exhibit. This is an original document, you know.

Judge Revelle: He can do that, or why can't you just get one of those blanks, the department has lots of them, and let him fill it in.

General Gose: All right, that will do, and be more useful.

General McAllister: Yes.

General Gose: Also the same in regard to——

[fol. 3245] Mr. Leahy: Just say with regard to any paper you have had identified.

General Gose: In regard to the others.

Judge Revelle: Yes, sir. That is all, Mr. Dugan.

Witness excused.

GEORGE H. BELL, of lawful age, produced as a witness on behalf of the Relators, being duly sworn, upon examination testified as follows, to-wit:

Direct examination by Judge Revelle:

Q. You live in Chicago, Mr. Bell?

A. Yes, sir.

Q. Mr. Bell, in what business are you engaged?

A. Fire insurance business.

Q. And in what particular connection or capacity?

A. Assistant General Agent of the Western Department of the National Fire Insurance Company of Hartford, Connecticut.

Q. With headquarters at Chicago?

A. Company headquarters at Hartford, my headquarters at Chicago.

Q. You, by reason of your connection with that company, are in a general way familiar with its experience, as well as the general experience of fire insurance companies, are you not?

A. I believe so.

Q. Your company operates in the State of Missouri and has for many years?

A. Now, more than twenty-five years; I don't know exactly how many.

Q. During the past five years do you know what the loss ratio of your company has touched in the State of Missouri?

[fol. 3246] A. Well, I have the figures by years, but it is about—about sixty-five or seventy per cent. In 1913, it was eighty per cent; 1914, it was seventy-eight and seven tenths; in 1915 it was fifty-five and two tenths; in 1916 it was fifty-nine and five tenths; in 1917, fifty-nine per cent.

Q. Now, for a period of five years preceding that were you familiar with the experience of your company?

A. I could not give you the exact figures, but in seventeen years we made a little money two years only.

Q. Two years only?

A. Yes.

Q. The other fifteen years you operated at a loss?

A. We lost.

Q. And you mean by that the seventeen years immediately preceding this year?

A. Yes, sir.

Q. What is the average expense ratio of the fire insurance company?

A. The National is approximately forty per cent.

Q. Forty per cent?

A. A little less than that some years and a trifle more other years.

Q. Yes.

A. But the average is forty per cent.

Q. Year in and year out it will average that?

A. Yes.

Q. Are you familiar in a general way with the expense ratio of your competitors operating in this state?

A. We think that the American companies are approximately the same as ours.

Q. How about——

A. Foreign companies a little bit less, due to administra-
[fol. 3247] tion expenses largely taken care of in foreign countries.

Q. Do you know about how much less?

A. About two per cent less.

Q. There is quite a number of foreign companies that once operated here that are not now operating here, I believe?

A. How is that, Judge?

Q. Quite a number of foreign companies that formerly operated in this country and in Missouri that are not operating here now?

A. I am not positive as to that.

Q. None of the German companies are operating here?

A. The German companies have been, of course, restricted in their operations in this country.

Q. Now, of your forty per cent expense ratio what part is represented by your home office expense?

A. I would estimate it at about eight per cent.

Q. About eight per cent? Now what is included, in a general way, in that eight per cent?

A. Well, it is salaries of the home office officials, president, vice-president, secretaries; the printing and stationary of department offices; general salaries, expenses.

Q. May I ask, does it include all expenses of the company that cannot properly be charged to some particular or specific State?

A. I so understand.

Q. You take an expense that is incurred in a particular State and the benefits of which are limited to the business in that State, those expenses are charged to that particular State?

A. Yes, sir.

Q. Expenses that are incurred in the general conduct of [fol. 3248] the business and which cannot be properly assigned to any given State are included in the home office expenses?

A. I so understand.

Q. And you say that is about eight per cent?

A. That is about eight per cent.

Q. Of the premium income?

A. I wou-d like to explain my answer, "I so understand," that I personally have nothing to do with the making up of these statements as to the apportionment or division of home office expense and strictly State expense. That is all done at our home office.

Q. Now, while I understand you have nothing to do with preparing the annual statements of the companies, yet you do have personal knowledge of the fact, regardless of what these statements may disclose, that about eight per cent of the premium income of your company is consumed in these general overhead expenses?

A. I so understand.

Q. And about forty per cent, which includes home office expenses, of your premium income is required for the purpose of conducting your business?

A. Yes, sir.

Q. And that is a knowledge on your part without any regard to what is stated in the annual statements of the companies by the officers?

A. Yes, sir.

Q. Mr. Bell, how would you define a conflagration?

A. A conflagration, my definition of it would be a fire extending over a large area, or an area greater than that which was contemplated in our consideration of a possible fire in the making of a rate for the town or the city in which it occurred.

[fol. 3249] Q. In making a schedule of fire insurance rates, as in making life insurance rates, is it not recognized that there is a general law of averages of percentages that must be made by your previous schedule of rates?

A. That is the intention and what we endeavor to do.

Q. You approximate that as nearly as your experience and the conditions which confront you permit?

A. Exactly.

Q. Now, when fires occur which are not included within this general average experience which the law of percentage takes care of, you ragard that as a conflagration, do you not?

A. As a conflagration.

Q. Will you give me the dates and some instances occurring, say in the last ten or twelve years, of what you regard as a conflagration?

A. Well, I made a memoranda of just a few which doesn't—a few of the principal ones, starting in 1906 with the San Francisco conflagration of $350,000,000; the Chelsea, Massachusetts, of $12,000,000; 1910, a Montana conflagration of $6,000,000; another one in 1910, a forest fire which consumed a number of villages in Minnesota, $3,500,000.

Q. Well, now, then the Montana fire—that was at Cedar Spur?

A. Cedar Spur. It is a town I am not familiar with but I know it took the whole town as I remember. In 1911, at Bangor, Maine, $3,500,000; 1914, Salem, Massachusetts, $14,000,000; and in 1916 the Black Tom conflagration on Long Isand of $11,000,000—or Black Tom Island off of Long Island.

Q. Now, those are fires that you would strictly term a conflagration?

A. Yes, sir.

[fol. 3250] Q. Now, there was a fire in the year 1917 in New Jersey of $12,000,000 would you regard that as a conflagration?

A. Well, it was—it was not a property that was owned by various individuals; it was largely powder mills and the villages and stores and commissaries incident thereto,—to the war industry.

Q. Well, now, notwithstanding that was a heavy loss of

$12,000,000, you would hardly call that a conflagration, would you?

A. Well, we wouldn't in our definition of a conflagration.

Q. Because there were peculiar hazards there of which you had notice and knowledge?

A. Yes.

Q. And which enabled you to apply to that condition your knowledge of the law of average and percentages and you made your rate accordingly?

A. Limiting our liability.

Q. And limiting your liability?

A. Yes.

Q. For that risk? Notwithstanding the loss was $12,000,000 you do not term it a conflagration?

A. I wouldn't, no.

Q. Now, have there in addition to these fires that you have mentioned, beginning with the year 1906, twelve years ago, there have been other fires of, say a million dollars?

A. Oh, many of them.

Q. That have really been conflagrations, have they not?

A. Yes, sir.

Q. And other fires of ten or twelve million that have not been conflagrations?

A. I should say so, yes, sir.

[fol. 3251] Q. I believe you gave the amounts of the fires that you term conflagrations, did you not?

A. Aggregating fifty millions, or four hundred millions I should say, including San Francisco.

Q. Four hundred million in a period of eleven years?

A. Eleven years.

Q. Of these here fires that you say that in preparing the ordinary schedule and making the regular rate you cannot contemplate the condition, or fire which resulted in these cases?

A. Yes, sir.

Q. That they do not?

A. They do not.

Q. Mr. Bell, you are familiar—are you familiar with any new or abnormal conditions that have resulted from the war—fire conditions?

A. Well, we all—all insurance men, and I think officials of cities and States, recognize that due to the war fire de-

partments have been very seriously impaired; factories are working overtime with inefficient help; we naturally expect larger and greater losses—more losses under present conditions than we would in normal times.

Q. Well, now, in making up a rate, either a basis rate or a specific rate—in making up a basis schedule or a specific rate when made as in the State of Missouri, doesn't that—isn't that rate affected by each particular condition prevailing in connection with the risk?

A. It should be.

Q. Well, you intend that to be your practice in the State of Missouri?

A. That is the intention.

Q. For instance, say in making your general basis rates if you find an overcrowded condition, if you find the property owner permitting generally the accumulation of debris, [fol. 3252] and if you find a city where conditions are such that they cannot keep their streets cleaned out, but allow burning material to accumulate, those things always reflect themselves in a rate, do they not?

A. Yes, either in the basis rate or in the after charge which is made to cover that condition.

Q. Well, now, the present rates that are being charged were made upon conditions before any of these abnormal hazards existed?

A. They were.

Q. Were they not?

A. They were.

Q. And these conditions now that increase the hazard, they are not merely here and there, but they are quite general throughout the country, are they not?

A. They are, yes, sir.

Q. Now, by reason of these conditions which you say added to the fire hazard and created new risks, you expect greater fires than you have had before?

A. Very much greater.

Q. I will ask you if, in point of fact, since these conditions began to develop and to exist, if you have not actually found up to this time that the fires have greatly increased throughout the country?

A. We have had many losses which we attribute to that condition, generally acknowledged to be due to that condition.

Q. And which your experience and investigations indicate—fires which your experience indicated, and investigation indicated, would not have occurred except for these abnormal conditions resulting from the war?

A. We think so, yes, sir.

Q. And is that true in the state of Missouri?

[fol. 3253] A. It is true in every state in the Union we believe.

Q. Are you familiar——

A. Where—pardon me—every State except perhaps strictly an agricultural State.

Q. Missouri is not so regarded in the insurance world?

A. Not by any means.

Q. Missouri is a State with a number of conflagration districts, is it not?

A. We regard Missouri—St. Louis, Kansas City and some of your other cities, as being very, very susceptible to conflagrations.

Q. Now, are you familiar with the experience of the companies in Missouri since the first of January, say the first four months of this year?

A. Of this year?

Q. Yes.

A. I am not.

Q. You are not?

A. No.

Judge Revelle: I believe that is all.

Cross-examination by General Gose:

Q. And are you connected with the same company Mr. Dugan is, are you?

A. Yes, sir; I am with the National Fire Insurance Company of Hartford.

Q. The National Fire Insurance Company?

A. Yes, sir.

Q. Now, you said in 1913 you had a loss of eighty per cent?

A. Yes, sir.

Q. What do you mean by that, Mr. Bell?

A. Eighty per cent of our premium income.

[fol. 3254] Judge Revelle: Will you let me ask him one other question before you begin your cross-examination?

General Gose: Yes.

Judge Revelle: In connection with conflagrations; has there been in the State of Missouri during the past five years, that is, the years 1914, 1915, 1916 and 1917, and 1918, any fire which you would term a conflagration?

A. Well, I think the only one that I can think of would be Chillicothe, Missouri; I think they had a very large fire extending over one or two blocks.

Mr. Dugan: And Kansas City.

Mr. Leahy: Kansas City, this year.

The Witness: Of course, Kansas City, the wholesale district fire, that was a conflagration.

Judge Revelle: Now, when was the Chillicothe fire?

A. I think that was about two years ago. I would like to refresh my memory on that by looking up the records.

Q. That was not a heavy loss though?

A. Not exceedingly heavy, but for a community of that size, considering the premium income of the town we would call it, I think, a conflagration.

Q. An extraordinary fire?

A. Yes.

Q. But you do not remember what the loss was?

A. I cannot now. I could get it.

Judge Revelle: That is all, General Gose.

General Gose (resuming his cross-examination): What were your premiums in 1913, Mr. Bell?

A. You will permit me to refer to the actual figures.

Q. Yes. In Missouri now?

A. $200,890.

[fol. 3255] Q. What were your losses?

A. $159,788 was the losses paid.

Q. Now, on the earnings did you—what earnings did you credit to Missouri in that year?

A. I am sure I couldn't tell you sir.

Q. What expenses did you have in that year?

A. We had—let me see, 1913, forty and nine-tenths per cent.

Q. Well, how much in money—dollars?

A. Well, I couldn't tell you the figures.

Mr. Leahy: Over $81,000.

The Witness: Yes, I have to figure it out for you, sir.

General Gose: How much money did you figure you lost in that year?

A. Well, we would lose the difference between 40.9 per cent and 79.6 added together. If you wish me to take the time to figure it out for you I will.

Q. I would like to know just how much you figured you lost that year.

Judge Revelle: I submit, Your Honor, that is purely a matter of calculation.

The Witness: How is that?

Judge Revelle: That is purely a matter of calculation.

The Witness: That is purely a mathematical calculation.

Mr. Leahy: Well, you lost about twelve or thirteen per cent?

A. Twelve or fifteen per cent of our premium income.

Q. About twenty per cent?

Judge Revelle: Paid out a hundred and twenty dollars for every hundred collected?

A. Yes, sir.

[fol. 3256] Judge Revelle: Very simple.

General Gose: All right, let him give me the calculation if it is very simple.

The Witness: Approximately twenty-five thousand dollars.

General Gose: Now, did that include all the insurance business which you did in the State of Missouri?

A. Yes, sir.

Q. Including all kinds of insurance business, fire and all that?

A. Didn't do anything but a fire business and a tornado business.

Q. Well, it includes all the business you did?

A. Yes.

Q. For the year 1913?

A. 1913.

Q. What were your premiums in 1917?

A. 1917? $365,827.

Q. What were your losses?

A. $188,128; that is the losses paid. Our losses incurred were two hundred——

Q. (Interrupting.) Losses paid? You figured that by the year, did you not?

A. It runs over every year to the other, and it is losses paid and losses incurred. Losses incurred are usually higher than losses paid.

Q. But they are taken care of next year?

A. Yes, it all takes care of itself.

Q. How much were the losses paid?

A. Losses paid, $188,128.

Q. And what were your expenses?

A. Expenses were 38.3 per cent.

Q. What was your loss that year?

A. Well, we did not have any loss that year.

Q. What about 1916?

[fol. 3257] A. I beg your pardon, we broke just even with the game in 1917.

Q. What about 1916?

A. 1916?

Judge Revelle: Well, I have no——

The Witness: I would like to correct this answer.

The Commissioner: Just a minute.

Judge Revelle: I have no particular objection to this line of inquiry other than it simply consumes time. These figures are all in the record, and to merely have this witness make this computation and to put these questions and answers in the record is wasting time.

General Gose: The figures from which he has made his computation are not in the record.

Judge Revelle: They are exactly the same.

General Gose: Maybe they are, and maybe they are not, Judge.

The Commissioner: I don't know.

The Witness: I am saying approximately all the time you understand, sir.

General Gose: Yes.

The Witness: My answers are made that way because I would have to have the records of the company, or our annual statements in your possession, in order to give you the correct answer.

General Gose: That is it exactly; we understand it.

Judge Revelle: We have no objection to putting all these figures in the record. This witness is testifying only from these particular records.

The Commissioner: There is no evidence these records are the same as those.

The Witness: These records are made up from the annual statement figures we submitted or filed with the Insurance Department.

[fol. 3258] Judge Revelle: I can explain, Your Honor, that is a record that is compiled by the publishing company that takes the report of the companies and works out these figures, and take their figures filed with the Department, and they simply re-publish it in that form and they sell that book then to anybody that wants information. Now, while that is not official, it is a private publication, and the witness having testified from that if the General feels it will be of any service to him we have no objection to him simply offering him this private compilation of those facts and figures but I do not see how the witness merely taking these and reading from them is of any value.

The Commissioner: I don't exactly understand but then I will let him proceed in his own way.

To which ruling by the Commissioner, the Respondent, by his counsel, then and there excepted at the time and still excepts.

The Witness: I would like to correct another answer I made when I quoted you expenses, I only figured the expense each year as the company's expenses for the whole United States, not its Missouri expenses, which is considerably higher than that of the average.

General Gose: Yes. But you take the total expense and then take a certain per cent of that and attribute it to Missouri, and isn't that the way you arrive at the Missouri expense?

A. We take the actual Missouri expense and add to that a pro-rata of the general expenses.

Q. Yes.

A. Which makes a higher expense than we had in other states.

Q. And all your testimony is approximate testimony?

[fol. 3259] A. Absolutely so. If you had given me time I

would be able to give the records from our office and give it to you exactly.

Q. Yes. Now, I believe you testified that your experience in Missouri had been to lose money generally, did you not?

A. Yes, sir.

Q. Well, now, I am trying to get at how much money you figured that you have lost. Now, I ask you again, what is your approximate of the amount of money which you lost in Missouri in 1910?

A. I think I said approximately $25,000.

Q. No, that was 1917.

A. No, 1916, wasn't it?

Mr. Leahy: 1917 he said he broke even.

The Witness: 1917 we broke even according to the estimate of expenses. I mean taking the expenses for the whole United States and applying it to Missouri, taking our loss record in Missouri, and we broke even, but in reality we lost a little money.

General Gose: I think if that is your testimony, Mr. Bell, the record is wrong. I understood you to say that 1913 you lost $25,000.

A. Yes, sir.

Q. That in 1916—1917 you broke even, and then I asked you what it was for 1916.

A. I said approximately broke even.

Q. I understand.

A. The loss ratio was fifty-nine per cent, and our expense ratio for the United States was thirty-eight some, which added to the two per cent, which I figured differential, the increased expense in Missouri would make us break even.

Q. Now, I am asking you for your figures on 1916?

[fol. 3260] Judge Revelle: Right in this connection I want the record to show this, that counsel in asking the witness concerning figures with the knowledge that the only figures that he has are the figures contained in a private publication, and that he is merely asking this witness to orally testify to a record that the plaintiff now offers to place in the record if the counsel so desires; and further, that the witness is not purporting to testify to figures other than those which appear in this publication, and not purporting to testify as to his personal knowledge of these things.

The Commissioner: I would like for that to go into the record. I will let you ask the witness the question, Judge, as to what those figures are so it can all go in at the same time.

Judge Revelle: Well, just state what that compilation is?

A. The compilation which I am quoting from is a publication by "The Weekly Underwriter" of New York, purporting to be taken from the companies' sworn statements as filed with the Missouri Insurance Department, and which gives the risks written, premiums received, losses paid, per cent loss paid to premiums, losses incurred and the per cent of loss incurred to premiums.

Q. Now, have you actual personal knowledge that the figures set out there are correct, or are you in your answers to these questions merely intending to give the figures you find in this publication?

A. Giving the figures in this publication which I feel to be approximately correct—believe to be approximately correct.

Q. In these answers you propose to make as to these figures you do not propose to testify of your own personal knowledge of them, but merely from your reading of these [fol. 3261] figures from this private publication?

A. Reading from the publication and testifying on these figures only.

Judge Revelle: That is all. I just wanted the record to show what the testimony is.

The Commissioner: Now, will you proceed, General? Just proceed in your own way.

General Gose: I am waiting for his answer.

The Commissioner: Sir?

General Gose: I am waiting for his answer to that 1916.

The Commissioner: Yes. Will you ask the question again?

General Gose: He is figuring it out now.

The Commissioner: Oh, yes.

The Witness: In 1916 these figures show that we made an approximate profit of $29,000.

General Gose: Now, in 1915 what is your estimate of your losses again—1915?

A. 1915?

Q. Yes, sir.

A. These figures would show a profit of approximately $6,000. The difference comes in—entirely in the expense figures, which I am not able to give.

Q. Well, then, if you are not able to give the expense figures you could not tell exactly whether you made or lost?

A. I told you approximately, sir, based on these figures. I haven't the expense figures for Missouri.

Q. Yes.

A. Which are much higher; they are at least two per cent higher than the figures shown for the United States, which are the only expense figures I have with me.

[fol. 3262] Judge Revelle: I would like to ask this one question, if this compilation from which you have been reading and testifying, if it doesn't purport merely in giving the expense ratio to give the average expense ratio throughout the United States, and not the expense ratio for Missouri of any other particular State?

A. I haven't any expense ratio figures at all, Judge.

Q. I say doesn't this book, though, which gives——

A. It doesn't give any expense ratio figures; it only gives the loss ratio.

Q. I see.

A. Losses, percentage to losses paid, and losses incurred.

Mr. Leahy: You are reading——

A. The Argus gives the expense figures for the whole United States.

Judge Revelle: I mean whatever book you have taken your expense ratio from, that compilation purports not to give the expense ratio in Missouri?

A. No.

Q. But for the expense ratio throughout the United States?

A. For the United States.

Q. And the expense ratio——

A. I say Missouri is very much higher than the average for the United States.

The Commissioner: Did you figure it higher?

A. No. I have been taking these figures and just arriving at an average of approximately the results in the State.

General Gose: He is using the average.

The Witness: I stated all the time I couldn't give the——

[fol. 3263] The Commissioner: There have been so many

statements I don't just understand the witness yet. May I ask a question? In figuring how much money, did you use any expense ratio at all?

A. I have taken the average for the United States.

Q. Yes, sir. And then did you figure it higher for Missouri?

A. No, sir.

Q. You figured it the same?

A. I took it the same, the average for the United States.

The Commissioner: That is what I wanted to find out.

General Gose: Now, Mr. Bell, you testified you have been losing money in Missouri for the last five years, did you not?

A. Yes, sir.

Q. Now, I want you to tell us how you arrived at those figures, and just what your losses were?

A. I have taken the loss ratios for—on losses incurred, not on losses paid; I have figured them at fifty-nine; fifty-nine, five; fifty-five, two; seventy-eight, seven; and eighty.

Q. Yes. Now, then, for the year 1913 you testified the loss was $25,000 and something?

A. Based on the expense ratio for the whole United States.

Q. I am trying to get at, Mr. Bell, what was the basis of your testimony when you said you had lost.

A. The basis of my testimony is my actual knowledge of the general results in the State of Missouri for the National Fire Insurance Company. If you will give me an opportunity to bring our records down here, or secure them, I can give you the exact expense ratio, the exact loss ratio, and the exact loss in dollars and cents.

[fol. 3264] Q. I would be very glad to have you do that.

A. I would be pleased to do that.

Q. All I was trying to get at was to understand the figures upon which you based your statement that you had lost money in Missouri?

A. That was my own knowledge of the results in the State, but I cannot give it to you in dollars and cents without records of the company.

Q. No. In other words, you are testifying from your memory?

A. No.

Q. Knowledge, that you have lost money, but you could not say how much?

A. I cannot say how much.

Q. Now, you do know that some years you did make some money?

A. Two years in the last fifteen.

Mr. Leahy: Last seventeen.

A. Last seventeen. I cannot tell you what years those were, except the only two years in which our figures show black.

General Gose: Yes.

A. (Concluding.) In our final results.

Q. Now, in your final results are you speaking of figures in the department at Chicago, or in the home office in New York?

A. The department in Chicago.

Q. Now, in your figures in your department in Chicago you take into no consideration the credits which the home office gives to Missouri for interest on unearned premiums and its pro-rata part, or interest on capital and surp-us earnings?

A. No, sir.

Q. You are figuring exclusively from premiums and losses?

[fol. 3265] A. And expenses.

Q. And expenses?

A. Yes, sir.

Q. And your estimate of the expenses is based upon a percentage or the actual money paid out, which?

A. Percentage.

Q. Percentage?

A. Applying the percentage to the home office expense only.

Q. Yes. Now, let me ask you another question, in applying the percentage to the home office expense, you simply take the figures they report? You, yourself, do not know anything personally about the expenses of the home office, do you?

A. No, sir.

Q. Well, now, I think we understand that. And when you say that the home office and departmental expenses are

about—when you say that Missouri's part—no, strike that whole business out. And when you say that your home and departmental expenses are eight per cent of the total premiums received from all business, you mean that the figures given by the home office as departmental expenses amounts to eight per cent of those total premiums?

A. I don't know; I don't know that they do.

Q. Well, how do you get at eight per cent, then?

A. I say that in my opinion, my judgment, is approximately what it is—eight per cent.

Q. Oh, yes. You have never figured it exactly?

A. No.

Q. What it is?

A. No, sir; I have never had any reason to make any such figures.

Q. Now, is that true of the other percentages which you have used in these computations?

[fol. 3266] A. Commissions, taxes?

Q. No, no. I mean with reference to when you were figuring expense accounts?

A. Well, I was only taking the figure of expense as shown in this book for the United States, the total expense of all kinds.

Q. You personally have never worked this out?

A. Never had any occasion to.

Q. Well, I just wanted to understand that, Mr. Bell. Now, I believe you testified that in fact there were a great number of fires due to the increased war activities?

A. Yes, sir.

Q. Did you testify to that as a fact that you knew of your own personal knowledge, or was that the conclusion which you drew from the general conditions that lead to increased hazard?

A. From the general conclusions or observation that we naturally have of losses, of their causes, and their amounts.

Q. Yes. Now, what losses in Missouri that have been paid in this year by personal investigation have you found were directly traceable to an act of an alien enemy? Do you know of any that you have personally investigated?

A. I have personally investigated no losses in Missouri.

Q. Now, what did you mean when you said that from your investigation there had been?

A. I did not. Pardon me, I do not think I said that.

Q. Well, I beg your pardon, I understood it that way.

A. I didn't use the word "investigation" as my investigation.

[fol. 3267] Q. You personally have not investigated the origin of any fire within the State of Missouri for the last year?

A. No, sir.

Q. You could not say from your own personal knowledge that any fire, and name any particular fires, that have occurred as a direct result of war conditions?

A. Only the general knowledge that every man has. Take the stockyards fire in Kansas City, your own State officials I think attribute that to an enemy alien.

Q. Well, I say you are testifying now——

A. General knowledge.

Q. ——from general knowledge?

A. Not specific.

Q. Not from any specific condition? Well, that is all I wanted to get at, Mr. Bell. I believe that is all.

Redirect examination by Judge Revelle:

Q. Now, Mr. Bell, of course you as manager of this company—in the first place, do managers of any big insurance company go out personally to make investigations of fires? The function of a manager is entirely different to that, isn't it?

A. Certainly.

Q. Well, you have not personally gone out and gone on to the ground and investigated these fires, but the reports of the people who are sent out to investigate them finally reach you, do they not?

A. Yes, sir.

Q. That is the general manner in which your business is conducted?

A. Yes, sir.

Q. You send out people who are efficient in that line and [fol. 3268] employed for that purpose and they report the result of their investigations to you?

A. Yes, sir.

Q. Their facts, their conclusions, and so on?

A. Yes, sir.

Q. And you are basing your testimony and your knowledge of these general conditions upon the facts that your investigators have found and have reported to you?

A. Yes, sir.

Q. I believe you stated that you did not have personal knowledge of the figures which go to show that the home office expense is eight per cent? You have personal knowledge, have you, of the expense items which go into the home office expenses, and which in the aggregate constitute that eight per cent?

A. Yes.

Q. You have already testified to that?

A. Naturally so.

Q. And now outside of the home office expense you are in direct touch and have personal knowledge of the expenses of your company, have you not?

A. Yes, sir.

Q. You have charge of individually the underwriting expense to the company, except the home office expense, have you not?

A. Yes, sir.

Q. As manager of this western territory?

A. Yes, sir.

Q. And your statement as to their expenses, except the home office expense, is one of personal knowledge, is it not?

A. Yes, with this exception——

Judge Revelle: That is all.

[fol. 3269] The Witness (continuing): —that I cannot give those figures,——

Judge Revelle: I understand.

A. (Continuing:) —in this testimony without having the record with me from our office in Chicago.

Q. As I understand it, you cannot detail the figures upon which you—from which you have secured the general knowledge that you have testified to, but you have gone over those figures and personally know that those figures disclose what you have stated?

A. Yes, sir.

Judge Revelle: That is all.

Recross-examination by General Gose:

Q. Now, Mr. Bell, have you ever been in the home office and helped to make out any of these?

A. No, sir.

Q. Well, as a matter of fact, you don't know just what items they have put into this home and departmental expense from your own knowledge, do you? And you couldn't have unless you had been there to take part in it, could you?

A. Not the home office.

Q. Well, that is what I am talking about, the home office and departmental account of expenses?

Judge Revelle: That is not an expense which I interrogated him about generally. I was interrogating him about expenses other than the eight per cent.

General Gose: I remember it.

The Commissioner: What is the capital of your company, Mr. Bell? What is the capital?

A. The capital of the National?

Q. Yes.

A. $2,000,000.

[fol. 3270] General Gose: By the way, I do want to ask one or two questions more, please. What is the salary of your president, Mr. Bell?

A. I don't know.

Q. Do you know the salaries of any of the general officers?

A. No, sir.

Q. Do you know how many people are employed in the general office—home office?

A. Approximately three hundred.

Q. Three hundred? And how many officers of the company; do you know?

A. How many departments?

Q. Officers of the company?

A. President, vice-president, secretary, one assistant secretary, and a general agent at the home office.

Q. The others are merely employees?

A. Well, chief accountants, cashiers——

Q. I understand.

A. —etc. That is at the home office only.

Q. But what I was speaking about, general officers of the company?

A. Yes.

Q. Is limited to these you have specifically named?

A. Yes.

General Gose: I believe that is all.

Judge Revelle: Now, you say you have about three hundred employees in the general office?

A. At the home office.

Q. At the home office in Hartford?

A. In Hartford.

Q. How many have you in your Chicago office?

A. We have about a hundred and seventy-five at this time.

[fol. 3271] Q. And you have an office also in Frisco?

A. We have an office also in Frisco.

Q. How many have you there?

A. I don't know.

Q. Does that office handle approximately the business that you handle?

A. Not nearly so much.

Q. Not so much? The number of their employees is probably not so great?

A. Not exceeding fifty I should say.

Q. Now, I would like to ask, before we adjourn, I would like to ask Mr. Dugan approximately how many employees you have in your home office?

Mr. Dugan: I should say two hundred and fifty; I don't know exactly.

Judge Revelle: How many have you in your Chicago office?

Mr. Dugan: About two hundred.

Judge Revelle: And have you any other offices where you employ people?

Mr. Dugan: We have the Southern Department at Atlanta, Georgia; I think probably seventy-five.

Judge Revelle: Any others?

Mr. Dugan: The Pacific Coast Department, San Francisco, with perhaps fifty.

Judge Revelle: Any others?

Mr. Dugan: That is the only general offices in this country. We have some—but you don't want those.

Judge Revelle: No.

Mr. Leahy: They are not large?

Mr. Dugan: No.

Judge Revelle: That is all, Mr. Bell.

Witness excused.

Judge Revelle: Now I guess we had better adjourn until in the morning.

[fol. 3272] General Gose: I am ready.

The Commissioner: What hour?

Judge Revelle: Oh, ten o'clock.

The Commissioner: Very well, adjourned until ten in the morning.

Thereafter, to-wit, on Friday, the 20th day of September, 1918, pursuant to the adjournment of the day before, the further hearing of said cause was resumed and the following testimony offered, as follows, to-wit:

Harold M. Hess, one of the Relators, now recalled as a witness on his own behalf, as well as on behalf of the other Relator, upon examination testified as follows, to-wit:

Direct examination by Mr. Leahy:

Mr. Leahy: We understand, Mr. Commissioner and the attorneys here, that it is agreed that this record might show that Mr. Murray Carlton testified as is shown by the affidavit that is filed of Mr. Murray Carlton before the Insurance Commissioner; and that Mr. Jackson Johnson was here and testified in the same manner as shown by the affidavit filed of his before the Insurance Commissioner.

General McAllister: Yes.

Mr. Leahy: And that all of the various builders and architects whose statements and affidavits that were filed before the Insurance Commissioner are, as far as this record is concerned, presumed to have testified in the same manner as their affidavits and statements show.

General McAllister: Yes, that is agreed to.

[fol. 3273] Mr. Leahy: With that understanding we will conclude our case with the testimony of Mr. Hess.

Judge Revelle: Except this one thing, we haven't that available this morning, but we will put it in the record, and that is the statement or record of the Insurance Department disclosing the capital stock and surplus of the different insurance companies doing business in the State of Missouri.

Mr. Leahy: Yes.

Judge Revelle: We want to put that in. That is in the printed report.

Mr. Leahy: There was one question, too, that Judge Gose asked, for i-stance, Mr. Dugan yesterday—you said now, "Isn't it true that in 1915, 1916 and 1917," I think, "eight hundred thousand dollars dividends were paid of the capital stock of the Hartford?" he said, "Yes," and you asked him, "What is the capital stock?" "$2,000,000.00." Now, as a matter of fact, that eight hundred thousand dollars dividend that was paid is just six per cent on the market value of that stock. The market value of that stock is five hundred dollars a share, made that by reason of the capital and surplus and the book value, adding the two together and dividing by the capital. I think perhaps that that mere statement as to the amount of the dividend might be misleading, showing that the stockholders were getting, oh, thirty, or twenty or thirty per cent; as a matter of fact, they are getting six per cent. We might desire to make some showing with reference to that in the event we think it is important.

Now, Mr. Hess, you have been sworn in this matter heretofore, and you have testified at some length heretofore. You testified with reference to the earning by the twenty-seven insurance companies whose names were furnished you by the Attorney-General on their capital and surplus. [fol. 3274] You testified, for instance, with reference to what they earned on their stock and bonds; you said that was a certain percentage, and then you testified with reference to what they earned on their real estate, you said that was a certain percentage; now those percentages that you gave were the percentages that were earned on the particular amounts that were invested in the particular kind of securities; is that true?

[fol. 3274] A. Yes, sir.

Q. Have you made a computation to determine what is the average earning of the twenty-seven companies whose

names were furnished you by the Attorney General, during the past five years, on their capital, surplus, unearned premiums, and all other sources of every kind and description?

A. I previously stated the amount or income from all these various sources, both in amount and in relation to the net premiums. Is that what you mean?

Q. I want to know what is the average earning of all these companies from all sources whatsoever, per annum, during the past five years?

A. I have not figured the total of all income. I have figured the total of all interest and previously stated that as being——

Q. (Interrupting.) Well, now, I don't want income where they simply receive premiums and pay them out. I mean interest that is earned, something that is earned on and remains a part——

A. The total interest for these twenty-seven companies for——

Q. Yes,

A. —for the entire United States——

Q. From all sources?

A. —from all sources was, as I have previously stated, $44,103,615.84, or 7.1 per cent of the premiums.

[fol. 3275] Q. When you say interest, you mean earnings of all kinds, don't you? You mean your real estate earnings, rents and various other——

A. No, sir.

Q. —items?

A. No, sir.

Q. You don't?

A. No, sir. I have, however, figured the amount of the income from those other sources individually, but I have not totaled them. For instance, the income on rents from company property for these twenty-seven companies——

General Gose: How much is that?

The Witness: For five years, is $4,576,911.31, or only one-half of one per cent of the premiums. The income from premiums on perpetual risks was only $276,389.67, or three one-hundredths of one per cent of the premiums. The income from the "Conscience Fund" was so small as to be practically negligible, namely $8,981.44, or one one-thousandth of one per cent of the premiums. The remainder

of their income, so far as I could determine it, deducting contra items, was $316,402.36, which I have called "Miscellaneous," and which was three one-hundredths of one per cent of the premiums; and so far as I could determine that was the entire income from all sources other than premiums and interest for all of these companies for the entire United States for those five years.

Mr. Leahy: And you have given the interest heretofore?

A. Yes, sir.

Q. What percentage does that entire income bear to the premium income? Would it take you long to figure it up? If so, we can take that up later. It will only take five minutes, I think we would save a little time by having it done [fol. 3276] now. (Witness does the figuring).

General Gose: Something over eight per cent.

Mr. Leahy: What is it?

General Gose: About 8.03 per cent; somewhere along there.

The Witness: 7.961 per cent. The reason that does not give exactly eight per cent, General Gose, I believe is because the 7.1 per cent that I gave you on interest was for the three years, 1915 to 1917. I picked that out for the three years purposely in order to compare it with the amount of interest that the companies had reported for Missouri in their "Underwriting Experience by Classes," to see whether or not they had prorated a proper amount to Missouri, and as you know that "Underwriting Experience by Classes" covered only three years, so I wanted the exact comparison for the three-year period, but for the five-year period the total of all income other than premiums was the percentage I have just stated, slightly under eight per cent.

Mr. Leahy: What have the earnings been on the percentage of earnings to premium income on the unearned premiums for the five-year period from 1913 to 1917, inclusive?

A. Approximately 3.4 per cent of the premiums was the interest earned on unearned premiums.

Q. Now, that three and a fraction per cent on unearned premiums is included in your figure of about eight per cent, isn't it?

A. Yes, sir.

Q. Now, have you figured that up, the earnings on all items other than premiums?

A. Yes, sir.

Q. About what per cent is that?

[fol. 3277] A. About eight per cent.

Q. Well, about eight per cent? Didn't I just understand you to say in answer to the question before this that included in that eight percent is the three per cent on unearned premiums?

A. Oh, yes, you mean the interest or the total income on everything except the interest on unearned premiums in percentage to the premium income; it would be the difference between the two figures I have just stated, or 4.561 per cent.

Q. Yes. I believe you have testified heretofore that the average cost of doing business during these five years was what? That is, what was the cost of maintaining this business, both here and at the home office? I believe you testified it was forty-one per cent, didn't you?

A. Forty-one per cent was the expense ratio for Missouri for that period.

Q. When I say—I mean the cost of doing business in Missouri, the expense ratio for Missouri was forty-one per cent?

A. Yes, sir; 40.6 per cent.

Q. And what was the loss ratio in Missouri?

A. 63.1 per cent.

Q. That makes 104 per cent, does it?

A. Approximately.

Q. Adding that to the 41 per cent? And you heard the testimony here yesterday with reference to the five per cent that is recommended by the Superintendents of the Insurance Departments to add for conflagration losses, did you?

A. Yes, sir.

Q. If you add that five per cent it would make 109 per cent in Missouri, would it?

A. Yes, sir.

[fol. 3278] Q. So, supposing you subtract from that 109 per cent the earnings from all sources, about eight per cent, it would still leave the companies doing business in Missouri at a loss, an annual loss, of about one per cent, would it?

A. Yes, sir; both on the underwriting and banking end of the business.

Q. Yes, both.

A. And without any profit whatsoever or any return to the stockholder.

Q. Well, it would be an actual loss, would it not?

A. Yes, sir.

Q. Of one per cent?

A. Yes, sir.

Q. Now, you were asked by the Attorney-General, or rather we were all asked, certain questions at the conclusion of the last hearing something like a week ago—have you received letters from companies in reference to those questions?

A. Yes, sir.

Q. Have you got them available?

A. Yes, sir.

Q. You have had them photographed so that they might be made a part of the record?

A. Yes, sir.

Q. Will you please give the names of the companies and then deliver the photographs to the Attorney General?

Judge Revelle: Would you gentlemen as soon have the photographs, or would you prefer to have the originals?

General McAllister: The photographs will do. They are all right.

Judge Revelle: They are absolutely correct.

General McAllister: Yes.

[fol. 3279] Mr. Leahy: You made the photographs yourself from the originals?

A. I had them made by our own clerks in our own office. We have our own photographing machine.

General McAllister: That is all right.

Mr. Leahy: And if you gentlemen desire, the originals are available any time you want to examine them.

The Witness: These are just the returns for the twenty-seven companies named by the Attorney-General in his request. You wish me to name those companies individually?

Mr. Leahy: You just hand the photographs over to them and they can examine them.

The Witness: And the statements from some of these companies as to the salaries of their officials insofar as we were able to get them In some places they have also given the pro-rata proportion of those salaries as assigned to Missouri in the same proportion that the Missouri premiums bear to the entire prem-ums of the company. We have given the figures for each year of the five years mentioned, and for each item of income and out-go, and have filed with that statement for each company a letter or statement from the company to the effect that the amounts of those individual items, except those that can be charged directly to Missouri, are pro-rated for Missouri according to its premiums as compared to the total premiums.

Mr. Leahy: Now, Mr. Hess, of this 41 per cent, the cost of doing business here in Missouri, what proportion of that amount is paid to representatives of the company in Missouri?

A. If we make an analysis of the expenses paid, the various items of expense in Missouri, we get the following results, and I name as those items of expense which involve [fol. 3280] amounts paid out to Missouri property owners, Missouri residents and citizens of Missouri, either in hotel bills or traveling expenses, or printing supplies, or commissions, and things of that kind. The commissions are approximately 22 per cent, all of which goes to residents of Missouri. The salary and expense paid Missouri agents and adjusters was approximately 5 per cent. The taxes, licenses and fees paid in Missouri is approximately three per cent. The Rating Bureau, fire prevention bureau, and inspection expenses was approximately two per cent; making a total of thirty-two per cent paid in Missouri, leaving a balance of only nine per cent that was taken by the companies out of the State.

Q. Now, I am going to run through these questions that were asked by the Attorney General to see that we have included them all, Mr. Commissioner. Now, the first one was, "Item of earnings except premium receipts for the year 1913 to 1917, inclusive. By "Items" we mean by classes, such as bonds, interest and unearned premiums, including all sources of income other than premium receipts on policies issued"—have you done that?

A. So far as we could from the records.

General Gose: You will find that there is a subsequent list of questions.

Mr. Leahy: This is the last list.

General Gose: Is it?

Mr. Leahy: Yes, sir; yes.

General Gose: No, I think not.

Mr. Leahy: No, I guess not. Now, these are the additional questions asked by the Attorney General, "The total yearly earnings or income from all sources other than premium receipts for each year from 1913 to 1917, both inclusive; that is, commissions stated year by year, and then [fol. 3281] the total yearly earnings or income from all sources other than premium receipts as accredited to Missouri, and the basis upon which that apportionment to Missouri is made." Have you done that?

A. Yes, sir.

Judge Revelle: Right in connection with that part of the request, Mr. Commissioner, we would like to make the statement that in compliance—in response with the Attorney General's request we are making a showing and producing information as to earnings from all sources, including earnings on capital and surplus and other assets, but that we do not at all concede, but on the contrary, take the position that only the earnings on unearned premiums are an item that can enter into a consideration of the questions involved in this case, and that the earnings on capital and surplus and other assets are not properly items whose earnings can be considered or material to any of the issues in this case.

Mr. Leahy: And that because of the Rating Act.

Judge Revelle: That is because of the provisions of the Rating Act.

The Commissioner: You may make proof of that, if you care to.

Judge Revelle: Yes, we just want the record——

Mr. Leahy: We voluntarily give this information to Your Honor.

The Commissioner: I understand.

Judge Revelle: But we do not concede its competency, or that it is an element of consideration in the case.

Mr. Leahy: Our position being under the provisions of the Rating Act that each State is a separate and distinct

sovereignty, and the business done in that particular state [fol. 3282] is treated separately, and that the Rating Act provides that a reasonable profit shall be made in the particular State, irrespective of what is done with the capital and surplus.

Judge Revelle: And only charges us so far as the banking end of the business is concerned with the earnings on the unearned premiums.

The Commissioner: And then Missouri would not get any part of the earnings on the capital and surplus?

Judge Revelle: Our contention is that no State in the Union would and that it is not an element of consideration when reviewing the question of rates.

The Commissioner: Yes, sir.

Judge Revelle: Not merely Missouri is not, but no other State.

Mr. Leahy: The next question propounded by the Attorney-General, or the next request for information was this, "and then an itemization of the source and yearly amounts from each source of all earnings or income other than premium receipts or income for each of the years named," you have given that, have you?

A. Yes, sir.

Q. The next request was, "the total amount of all Missouri business written and premiums received thereon for each of the years named, and I would like to have that separated into classes according to the term of the policy, one year and under in a class—I believe that is the way you say they handle it—and then two and three and four years; the total amount earned—" —well, that is the end of that request. Now, have you been able to give that?

A. No, sir.

Q. Why not?

[fol. 3283] A. I know of no record that I have available that would give the unearned premiums by separate classes of term business for Missouri, only such as the amount of unearned premiums on one-year business, the amount on two-year business, etc, and even if we had had such a record available we would not have been able to have figured any separate percentage of interest earned for the reason that the companies do not take and set aside one sum of unearned premiums reserve for one-year business and get

separate interest income on that, and then another item of two-year business, and three-year business, etc., getting a separate interest on each. The whole interest income being simply covered by these various items of interest that I have given from all sources.

Judge Revelle: They are not by any company segregated according to years?

A. They are not segregated according to years.

Mr. Leahy: Or classes?

A. Or classes.

Mr. Leahy: The next request was, "the total amount earned on unearned premiums on Missouri business for three years;" have you given that? Oh, no, "for these years"—for these years?

A. I have not given that in dollars and cents but I have given it as a percentage, three and four-tenths per cent of the premiums.

Q. Well, General, you want it in dollars and cents?

General McAllister: Yes, that is what I had in mind.

The Witness: It would be simply a case of figuring the percentage of the premiums for each year.

Mr. Leahy: For five years.

A. Of course, that is shown now in dollars and cents for [fol. 3284] each of the years 1915, 1916 and 1917, in the form "Underwriting Experience by Classes" for each company individually, and I think you will find no company, from any of those blanks that I have seen, that has failed to report the interest earned on unearned premiums for these three years in dollars and cents.

Q. That appears in the report of the insurance companies to the Superintendent of Insurance in this State for the years 1915, 1916 and 1917?

A. By specific amount under—opposite a specific item where that information is called for.

Q. Well, could you not secure the same information then for the years 1913 and 1914?

A. I know of no way by which that information could be secured, except as a percentage of the premiums, figured in approximately the same ratio to premiums that the unearned premiums for the last three years bears to the premiums for that period.

Q. Now, the next request, "the total amount of commissions on Missouri business paid agents each year from 1913 to 1917;" was that available?

A. The total amount of commissions paid agents?

Q. The total amount of commissions on Missouri business paid agents each year from 1913 to 1917?

A. That is also shown in the records for the last three years.

Q. Since the Rating Act went into effect?

A. Since the Rating Act went into effect, in this same pamphlet, "Underwriting Experience by Classes."

Q. That then is a part of the records of the State's Insurance Department?

A. Yes, sir.

Q. Next item, "total salaries and expenses paid agents [fol. 3285] and adjusters and all fees and other expenses in Missouri business for those years?"

A. The same answer would apply to that as to the last question; it is in the records of the Department on this form, "Underwriting Experience by Classes."

Q. And the General proceeds then—he says, "of course, that means salaries and expenses or fees and otherwise, which have been charged by the companies to the Missouri business." Your same answer?

A. Yes, sir.

Q. And the next request, "name and address of each agent or employee to whom a commission of twenty-five per cent or more was paid on Missouri business in each year from 1913 to 1917, both inclusive, and the total of such commissions paid to each agent or employee in each year."

A. The answer to that is, that practically all agents in the State receive commissions of twenty-five per cent or over, and we have previously given a printed book giving the name and address of all these agents throughout the State.

Q. That has been presented to the Attorney-General, has it?

A. Yes, sir. Of course, the twenty-five per cent commission, as I understand it, is only paid on one or two general classes of business, such as dwellings, and I would assume that practically all the agents in the State write

some dwellings, so that practically all the agents in the State would get twenty-five per commissions on some of their business. I think there are very few agents in the State that get any commissions higher than twenty-five per cent. In fact, I know of no agents outside of the city of St. Louis that get any commissions higher than twenty-[fol. 3286] five per cent on any class of business.

Q. Well, the next request, "the total amount of all expenses other than payment of losses paid on account of Missouri business for each year from 1913 to 1917, both inclusive."

A. Yes, sir; that is included in these photographic copies.

Q. "The total amount of all home office or overhead expenses or expenditures, and an itemization thereof by the year, showing on what account or for what purpose such expenditures were made."

A. Yes, sir; that is detailed in these blanks under the items headed——

Q. You mean these blanks—these photographs you handed to the Attorney-General?

A. Yes, sir—salaries and fees of home and branch offices, printing and stationery, postage and exchange, Federal taxes, expense of adjustment of losses, rents, advertising, legal expenses, furniture and fixtures, maps, repairs and expenses on real estate.

General Gose: Have you named all the items that go to make up the general expense of the home office of which Missouri pays a pro rata part, Mr. Hess?

A. All the items of any importance at all. For instance, there is a small item allowance to local agents, miscellaneous expenses, that is practically negligible, and I suppose some of the companies might include that as a part of the home office expense, that is, other than regular commissions and brokerage. Other than that I think all of the items are included.

Q. Yes. All right.

A. (Continuing:) Separately for each item, and for each year.

[fol. 3287] Q. Yes.

A. In that connection, one of the objects of our previous compilation of these figures was to show that the total of home and departmental expense, as prorates for Missouri,

was practically the same as the annual statements of the companies showed for the entire United States; that is, in percentage; we wishing to show that in these statements that the companies had made individually to Missouri on the pamphlet—on the form entitled "Underwriting Experience by Classes," that they had conformed to the general nation-wide experience, and that compilation of totals showed that for the United States the ratio was 7.9 per cent, and for Missouri, in those individual reports, it was 8.4 per cent, which is a difference of only one-half of one per cent, and in this return for the entire United States we have not tried to include any items but what could be legitimately charged to home and departmental expenses; namely, those items that I have previously enumerated.

Mr. Leahy: So that the difference in the charge of expenses against Missouri business and the general business throughout the United States is less than one-half of one per cent?

A. The difference in the home and departmental expenses is one-half of one per cent.

Q. Mr. Hess, could that difference of one-half of one per cent in the average or per cent be accounted for by reason of the excessive losses in this State as compared to other States? You say that the losses here are about sixty-three per cent. That is a mathematical calculation.

General Gose: I guess we will have to object to that one as a conclusion of the witness.

Judge Revelle: I think it is perfectly proper. This wit- [fol. 3288] ness stated he knows it is a fact that by reason of the excessive loss ratio in this State to premiums—he is giving this in percentage of premiums—that by reason of that it is necessary, as a part of the home office expense, for them to incur a greater expense in this State in connection with the men they send from their home office, in connection with the adjustment of these losses in Missouri, they being greater in percentage and in proportion than they are in other States, that the expense to the home office in making these adjustments and these supervisions in this State is proportionately greater, which is bound to be a fact.

The Commissioner: Was that the question that was asked? Read that question.

Q. (Read by reporter.) Mr. Hess, could that difference of one-half of one per cent in the average or per cent be accounted for by reason of the excessive losses in this State as compared to other States? You say that the losses here are about sixty-three per cent. That is a mathematical calculation.

Mr. Leahy: I will change the form of the question. Mr. Hess, as an expert on rating and rates, give us the explanation of the reason of the difference of the one-half per cent in Missouri expenses as compared to the general experience of expenses throughout the country?

A. The expenses of the companies, of course, consist in securing business and in handling losses, traveling expenses, the cost of adjustment, etc., and, of course, in an unprofitable State where the losses were greater in proportion to the premiums, the expenses of doing business would be proportionately increased.

Q. Now, there was another question propounded by the Attorney-General, asking for the names of officers provided [fol. 3289] for in the by-laws of some twenty-seven companies he selected, and the amount of salary paid to these officers; is that contained, so far as it was available, in the letters that you have given or the photographs of letters you have given the Attorney-General?

A. Yes, sir.

General McAllister: Perhaps these had better be marked as exhibits. You offer these, as I understand it?

Mr. Leahy: We give those to you for your information.

Judge Revelle: Well, we might do this, if it is preferable on the part of the Attorney-General——

Mr. Leahy: We will offer them.

Judge Revelle: We will offer them.

General McAllister: That is what I was going to say.

Judge Revelle: In view of the request made by the Attorney-General for them.

General McAllister: We will just mark them.

The Court: Do you object to them as being incompetent?

Judge Revelle: The record might just show that we are voluntarily offering these exhibits and submitting these facts and this information in response to the request of the Attorney-General; that they include some things that we do not think are elements of consideration in this case, which

things will be pointed out at a subsequent stage of the proceedings.

Mr. Leahy: But we believe that the officials of the State are entitled to whatever information they may desire.

The Commissioner: Yes.

[fol. 3290] Judge Revelle: And whether we regard it as competent or incompetent.

Mr. Leahy: Not whether it is competent in this case, or not.

The Commissioner: Yes, sir.

(Said photographic copies of letters and statements now offered in evidence were here marked as Relators Exhibits 12 to 35c, inclusive, and by agreement of counsel Relators furnish herewith copies of same to be attached and made a part of this record, which is accordingly done, said exhibits being pasted herein in alphabetical order as called for by the Attorney-General, as follows, to-wit):

To be found in attached "Exhibit Volume" from pages 41 to 64, inclusive, thereof, which said exhibits and Exhibit Volume are hereby expressly referred to and made a part of this Bill of Exceptions.

Mr. Leahy: That is all, Mr. Hess.

Cross-examination by General Gose:

Q. Now, you figured, Mr. Hess, I believe that the income from all sources other than premium income amounted to about eight per cent of the premium income; is that correct?

A. Yes, sir.

Q. What per cent of the earnings made by all of the companies upon investment and from all sources whatsoever, except premium income—strike that out, I want to put it in a different form, the whole question—taking all the earnings of the company from every source, except from premiums received, what percentage of the capital stock would such earnings represent?

A. I don't think I could give you that, General Gose.

[fol. 3291] Q. In other words, when you figured the percentage earned by the company from all sources except from premiums, that percentage was a percentage based upon the premiums received during the years, and not based upon the capital stock of the company?

A. Of course, the interest from capital stock and surplus is included in that figure.

Q. I understand.

A. And I have simply taken the total premiums and the total interest from all sources, including capital stock and surplus.

Q. Yes.

A. In dollars and cents, both items, and the eight per cent is the resulting ratio.

Q. But that eight per cent is eight per cent of the premiums earned in the year, and does not show what per cent the company has earned upon its capital stock?

A. Oh, no, it was entirely a ratio to premiums.

Q. Do you have any idea what percentage or earning upon the capital stock such earnings would show?

A. No, sir; I don't.

Q. What was the expense ratio of doing business in Missouri in 1917, Mr. Hess?

A. I don't think I have the individual figures here by years.

Q. Well, as a matter of fact, it was less than 1916, or 1915, or 1914, was it not?

A. I could not say.

Q. What were the premiums received in 1914 as compared with the premiums received in 1913? I mean by that, was there an increase or decrease in premiums in 1914 over 1913? Let me put the question in this form, from your examination and study of the insurance question, consider-[fol. 3292] ing all the companies, joint stock companies doing business in Missouri, fire, tornado, etc., is it not true that the premiums received have increased each year from 1913 to today?

A. No, sir.

Q. Sir?

A. No, sir.

Q. Well, have the premiums received in 1917 not been larger than the premiums received in 1916?

A. Now, are you speaking of all classes of business?

Q. Certainly.

A. Yes; yes, sir.

Q. Yes. Weren't the premiums in 1916 larger than the premiums received in 1915?

A. Yes, sir.

Q. Weren't the premiums received in 1915 larger than the premiums received in 1914?

A. No, sir.

Q. What was the difference?

A. Approximately five hundred thousand dollars less in 1915 than in 1914.

Q. Well, what were the premiums in 1914 as compared with the premiums in 1913?

A. About the same.

Q. About the same?

A. Yes, sir.

Q. And then only one year have the premiums received been less than in former years?

A. Yes, sir.

Mr. Leahy: During that five year period.

A. Yes, during that five year period.

General Gose: Yes, during that five year period. What were the premiums in 1917?

A. $14,109,000.

[fol. 3283] Q. What were they in 1916?

A. $11,802,000.

Q. What were they in 1915?

A. $9,907,000; and in 1914 they were, as I say, about $500,000 higher than 1915.

Q. Oh, what were they in 1914?

A. About $10,406,000.

Q. And what were they in 1913?

A. $10,318,000.

Q. Now, as a matter of fact, Mr. Hess, on the sheet "Underwriting Experience by Classes" introduced in evidence, marked Exhibit B, there are some earnings of the company that would not appear under the items X and double X as set out on that exhibit?

A. Very, very insignificant items. The total percentage would be very small.

Q. Well, just name the items that would not appear? "The Conscience Fund" would not appear, would it?

A. No. Rents from company property——

Q. Yes.

A. (Continuing.) —premiums on perpetual risks——

Q. Yes.

A. —"Conscience Fund" and miscellaneous, and——

Q. Yes.

A. —a total of which is about one per cent.

Q. Of all the premiums received from all sources?

A. Yes, sir.

Q. You mean by that that the items named would not appear as earnings upon the sheet, Exhibit B?

A. No, they would not.

Q. Yes.

A. I would like to change that one per cent, General Gose, to the exact amount, which is five hundred and sixty- [fol. 3294] one one-thousandths of one per cent; just a little over one-half of one per cent.

Q. Yes.

A. About five-tenths of one per cent. Practically all of that amount is from the rents from company property, showing that the total of all those items is almost negligible as far as ratios are concerned.

Q. Yes, as far as ratios are concerned, but might aggregate in actual money quite a considerable sum?

A. Well, I have the total here in actual sums.

Q. Only from seventeen companies, isn't it?

A. Only from these twenty-seven companies, but for the whole United States.

Q. For instance three one-hundredths of one per cent—for instance, five-tenths of one per cent represented by the item "Rents from Company Property" on the twenty-seven companies alone would represent $276,280.67, would it not?

A. For the entire United States.

Q. No, for the twenty-seven companies?

A. Yes, and for the entire United States.

Q. The other day I understood you to give the amount of rent from company property of the twenty-seven companies as $276,280.67; was I wrong about that?

A. That figures for the Whole United States for twenty-seven companies.

Q. For the whole United States?

A. Yes, sir.

Q. I understand, but it does not include the rents received by all the companies doing business in Missouri?

A. No, sir.

Q. Throughout the United States?

A. No, sir. I think I can illustrate the point by taking [fol. 3295] the item, "Premiums on Perpetual Risks," that amounts to three one-hundredths of one per cent; if we should apply that to the Missouri premiums we would only get $4,200 figuring on fourteen million premiums for 1917, showing what a small item it is.

Q. An earning of four thousand dollars for the State of Missouri for one year?

A. For all companies.

Q. Yes, I understand, for one company—for all companies? What would be the entire earning for the United States upon that basis?

A. $276,389.67.

Q. Now, what per cent of earnings of the capital stock of all the companies would that sum represent?

A. I don't know; a very small amount.

Q. Yes.

A. Practically negligible I should say.

Mr. Leahy: Well, the capital stock is $300,000,000, isn't it?

A. I don't know.

The Commissioner: Of these twenty-seven companies?

Mr. Leahy: Oh, no, all the companies. That is for all companies.

General Gose: About $90,000,000 I think, instead of three hundred.

The Commissioner: All of the companies or these twenty-seven companies?

General Gose: All of them doing business in Missouri.

Mr. McGee: All of the companies, it runs a little over a hundred million, all the foreign companies too.

General Gose: Of course, we are concerned only with companies doing business in Missouri.

[fol. 3296] The Commissioner: Yes, but I wanted the record to show that.

General Gose: What is the highest commission that you pay to any agent in Missouri?

A. I don't know, General Gose; that is a side of the business that I am not in touch with. The average commission is, as I have stated it from the records.

Q. Yes. You don't know and you couldn't say what the highest commission paid is?

A. No, sir; except that to the best of my information and belief there are no agents outside of the city of St. Louis receiving more than twenty-five per cent on any class of business.

Q. Now, how do you account for the fact that the agents in St. Louis receive higher commissions than agents in other cities and out in the country?

A. Any testimony that I might give on that would be entirely my personal opinion. I do not know why the companies have paid higher commissions in St. Louis, but I would be glad to give my personal opinion if that would be of any service.

Q. Well, I don't care to get into that. What proportion of the premiums paid in the State of Missouri are paid in the city of St. Louis?

A. I haven't the figures here.

Q. Approximately?

A. Oh, I think it is about one-third.

Mr. Leahy: Right in that connection, will you let me ask him a question?

General Gose: Yes.

Mr. Leahy: What percentage of the risks are written in St. Louis?

A. You mean in number of risks?

Q. Amount in dollars; what percentage to the whole throughout the State?

[fol. 3297] A. You are speaking of the——

Q. Premium income?

A. Well, about one-third. That is the same question that General Gose asked, as I understand it.

General Gose: Only I asked it in the form of commissions, and you asked it in the form of premium. About the same thing.

Mr. Leahy: Yes, sir.

General Gose: Now, Mr. Hess, you have rates—schedules of rates on file with the Insurance Department, have you not?

A. Yes, sir.

Q. Now, your inspectors go about over the country and they make increases in rates from time to time based upon the hazard of individual property that doesn't appear upon the scheduled rates; isn't that true?

A. No, sir; not that I have any knowledge of. If I understand your question correctly, all increases in rates and all decreases in rates on account of the changes in hazard, changes in occupancy, or mode of improvements, are made in accord with the schedules on file with the Insurance Department.

Q. I understand as a general rate schedule that is true, but suppose for instance that this building over here on the corner should develop some increased hazard by reason of which you raised their rate of insurance, would that appear upon the general schedule on file? Would you go to Jefferson City and change the rate of the general schedule of rates filed in the insurance office?

A. No. We would file with the Insurance Department the specific rate make-up on that individual building.

[fol. 3298] Q. But that would not appear as a part of the schedule of rates?

A. Any increase in hazard—any increase in rate made as the result of any increase in hazard would be made in accord with the provisions already previously filed.

Q. Certainly.

A. And in addition to that, the specific notice of increase in rates, the specific filing in this individual case would also be made.

Q. That is true. What you mean is, that the increase of rate in this particular building would be made in accordance with the schedule already filed in Jefferson City, and an individual memoranda or filing of that particular building made in the office at the time; is that correct?

A. Yes, sir. For instance, they put an automobile in that building and kept it there, our general basis schedule for Missouri provides, at the Insurance Department, provides for a charge for an automobile kept there under certain conditions, we would revise the rate according to the charge provided in the general basis schedule and send the ten days' notice of the advance to the Insurance Department at Jefferson City. Now, of course, on the other side we

are having lots of changes when improvements are made in the risks.

Q. Yes.

A. For instance, the city of Hannibal, after working for three years, has finally succeeded in lowering its classification, and only yesterday we published to all the companies and agents doing business in Hannibal a reduction of rates amounting to about twenty per cent. Of course, that is filed in Jefferson City in the same manner. So that the [fol. 3299] published rating record of all the companies for whom we act as attorneys-in-fact will always show clearly the exact rate charged on every risk in the State, and the conditions that go to make up that rate.

Q. Now, how do you arrive at your basis rate, Mr. Hess? What is a basis rate?

A. A basis rate is the residue of unanalyzed hazard.

Q. A very clear, definite, and certain answer.

Mr. Leahy: That is what it is.

General Gose: Now, will you please tell us how you arrive at the basis rate?

A. Well, I can—I can describe that best by telling of a personal experience I had in 1913; I was requested to go to Arkansas and attempt the application of schedules or selection of a general basis rate for the entire State of Arkansas. Arkansas had been in a peculiar condition prior to that time, having had no rates at all for the seven or eight years prior to 1913, so that we had absolutely nothing to proceed upon except the going rates, that is, the premiums charged by the companies for the individual policies. In determining what basis rate to use in Arkansas I took any basis rate in the schedule, it made no difference as long as it was applied uniformly, and made up a series of rates on towns of every type, both in construction and protection, and secured a certain set of rates, which I tabulated, and then I secured from the agents and companies the rates that they had been charging on these same identical risks that I had rated under the schedule, and in that way I determined the basis rate that would produce the proper level of rates in the State of Arkansas. There, as I remember it, we wanted approximately the same rates that the companies had been using, and in case my test showed that the

[fol. 3300] rates resulting from the higher basis table were higher than those that the companies charged, we could determine the exact general basis to use by taking the next lower basis, or the second lower basis and apply it to the entire State. The schedule is so constructed that a change in the basis rate automatically changes the final rate by the same percentage, so that the whole level of final rates is really regulated by the selection of the basis rate, since all the previous charges and credits are percentages of that original basis rate.

Q. What did you say that the average rate of commission was in the United States?

A. For these five years was 20.1 per cent ratio to premiums.

Q. What is it in Missouri?

A. 22.1 per cent for the three years, 1915 to 1917.

Q. How do you account for a higher rate of commission in one State than in another? Why should Missouri have a higher rate of commission than another State?

A. I don't know that it has a higher rate than any other State. It is higher than the average but I don't believe it is higher than some of the other States that have a large proportion of what has been called, "Preferred Business." For instance, I understand that the companies pay different commissions for different kinds of business.

Q. Yes.

A. And if one State might have a larger proportion of that class of business upon which the companies paid higher commissions, the average commission would be higher for all classes of business in that State.

Q. Now, upon what classes of business do you pay the highest rate of commissions?

[fol. 3301] A. My information on that is only hearsay, but I understand it is dwellings.

Q. It is what?

A. Dwellings, buildings and contents, which, by the way, is one of the most unprofitable classes of business in the State of Missouri.

Q. And yet that is the one upon which they pay the highest commission?

A. I think so at the present time.

Q. Do you know why that is?

A. I think it is because dwellings used to be a preferred class, a profitable class, and in the last few years they have changed most radically. Of course, there is also the argument, and again I am simply giving you my personal opinion on it, that the premium on a dwelling is very small and that the commission has to be a higher ratio in order to make it worth while for the average agent or company to write the policy. The rates are so low, being from in the neighborhood of fifteen to twenty-five cents, on dwellings, that it takes a very large dwelling to make a premium that will pay the expenses on the part of the agent and company in writing the business.

Q. Every time insurance is renewed the commission is paid, is it not?

A. I assume so.

Q. It is not like it is in life insurance, where they pay one flat commission for the entire period of years?

A. My life insurance agent tells me that he gets a check every time I pay my premium on my life insurance policy.

Mr. Leahy: But the fire insurance is a distinct and separate contract each time, is it not?

A. Each time the policy is renewed, yes, sir.

[fol. 3302] Q. It is a new contract? It is not a renewal at all, it is a new contract?

A. It is a new contract, just as the same as for the new business.

Q. Whereas in life insurance it is not a new contract, it is a continuation of the old contract?

A. Yes, sir; with a commission paid each time the premium is paid.

General Gose: In other words, in life insurance they get one premium?

A. Who? The agent?

The Commissioner: Gets what?

General Gose: The agent gets one premium.

The Witness: I don't understand so.

Mr. Leahy: No, General.

Judge Revelle: They get renewals, General, for every nine years, and the first year they get about ninety per cent on a premium, whereas the fire insurance agent only gets twenty-two.

Mr. Leahy: No renewals for the fire insurance business.

General Gose: In other words, every time you pay a premium the fire insurance agent gets a commission; that is true, isn't it?

A. I understand so; yes, sir.

Q. How much did you say the average cost of doing business in Missouri was the last five years? Now, let me put it this way—yes, that is expense—the average expense of doing business in Missouri?

A. 40.6 per cent.

Q. What is the average in the United States?

A. For that same period?

Q. Yes.

A. As I stated in my previous testimony, 38.6 per cent, a difference of two per cent.

[fol. 3303] Q. You are familiar with the rate making law in Missouri?

A. Yes, sir.

Q. What States have that, or a similar law?

A. I don't know. My experience has been confined exclusively to Missouri.

Q. So when in your previous testimony you were giving the number of States that had this surcharge, or ten per cent flat increase, you didn't know whether or not any of those States had this rate increase law?

A. Yes. I have a stenographer in my office who told me the other day she was paying a ten per cent increase on her property in Illinois.

Q. Illinois this increased rate? Has Illinois this Rating Act?

A. I have not heard that it has; no, sir.

Q. My question was this, Mr. Hess, when you said the other day that there were a number of States in which this increase of ten per cent was in effect, you don't know which of those States have in force——

A. No, sir.

Q. —the Rating Act?

A. No, sir; I don't.

Q. In those States that have not a Rating Act who fixes the rate?

Judge Revelle: I submit now, Your Honor please, that is purely a matter of asking this witness for his conclusion of law. The statutes of those States speak for themselves

and we will very readily furnish them to the General if he wants them.

The Commissioner: Of course, if he wants to answer it——

General Gose: If he knows.

The Commissioner: —I will let him answer, but I don't [fol. 3304] know that I feel that he ought to be called upon to answer unless he wants to.

General Gose: If they object to him answering it, I won't press it.

Judge Revelle: I will withdraw the objection if the General wants that as a mere matter of information. I don't think this witness knows.

Mr. Leahy: We do not want to be put in the light of attempting to keep anything out.

The Commissioner: I understand. It is rather hard for the Commissioner to rule when the objection is made and then withdrawn, and then the question withdrawn.

Judge Revelle: I will withdraw my objection.

General Gose: To simplify matters, I will withdraw the question.

The Commissioner: Yes, sir.

General Gose: Mr. Hess, before the Rating Act went into effect in Missouri who fixed the rates in Missouri?

A. The Missouri Actuarial Bureau.

Q. And that is the bureau you represent, or of a similar nature?

A. We did at that time; yes, sir. I say we fixed the rates; possibly that is subject to misinterpretation; we published the rates, but we had no knowledge what rates were charged by the companies.

Mr. Leahy: That is, you didn't know whether your rates were adopted, or not?

A. No, sir.

Q. The rates you did publish, how were they prepared, in the same manner that you prepare them now?

A. Yes, sir; approximately.

General Gose: But the individual companies charged or [fol. 3305] didn't charge that rate according to their own ideas; is that true?

A. I don't know. I say I had no knowledge of whether our rates were charged or not. We simply published our rates and when we had done that we were through with it —just as a matter of information to the companies.

Q. The Insurance Department didn't fix the rates in those days, did it?

A. Not that I heard of; no, sir.

Q. They did not apply to the Insurance Commissioner for privilege to increase or decrease rates at that time, did they?

A. We didn't.

Q. Did the insurance companies?

A. I don't know.

Q. Mr. Hess, have you ever been an accountant or worked in the general offices of any of the insurance companies?

A. No, sir.

Q. So from your own personal knowledge you couldn't testify in detail in regard to how expense statements are made up? From your own individual experience in working as an accountant or a member of a force in an insurance office?

A. Except that I assume that these itemized statements which are sworn to and on file are entirely accurate.

Q. I understand, but I am asking you if you yourself have ever personally been an accountant or examined the books of any of the insurance companies, and could testify in detail, for instance, as to certain items that went into home and departmental expenses, or do you simply take the items which they furnish, and figures which they furnish, in your estimates?

[fol. 3306] A. I have taken the items from the sworn statements of the companies to the insurance departments.

Q. Assuming, of course, that they are correct?

A. Yes, sir.

Q. What would you say would be a fair per cent of the net premiums received to be paid as commissions?

A. I would not want to express an opinion on that.

Mr. Leahy: The companies do not pay any more than they are compelled to by the acts of the agents.

The Witness: I don't know.

General Gose: Do agents dictate the commissions that shall be paid by the insurance companies?

A. I don't know.

Mr. Leahy: They do in St. Louis.

Judge Revelle: They come pretty near doing it, General, I will tell you.

General Gose: Maybe we had better investigate the agents.

Mr. Leahy: Yes, the agents are the ones you want to investigate.

Judge Revelle: We wouldn't have any objection to your doing it with some of them.

General Gose: As a matter of fact, Mr. Hess, what the fire insurance companies in the State of Missouri really need is an adequate law to protect fire insurance companies in the matter of a fire marshal, and such other protection as might be necessary, rather than an increase in rates, is it not?

A. Well, I would not say they need that rather than an increase in the rates, but I am very firmly of the opinion from my seven years' experience in this State that what not only the insurance companies need, but the property [fol. 3307] owners as well, are two fundamental things: one is, as you say, a fire marshal to stop these fire bugs and incendiaries from coming in from neighboring States like Iowa and Illinois and Kansas that have fire marshals, and doing as they will in the State of Missouri; and then in addition we need to educate our people along the lines of fire protection and fire prevention, and I am satisfied that the only really efficient way that that can be done is through the public schools.

Mr. Leahy: What are the companies doing in that regard? Just state for the information of all of us.

A. The companies are agitating that idea and right now I have had several conferences with the State Superintendent of Schools, Prof. Lamkin, and have secured the very strong co-operation of the Insurance Department, and working through Mr. Harty and Mr. Davis in having a text book adopted throughout the State right along this line of fire protection and fire prevention. Personally, I am very anxious to see the losses in this State go down, so that there won't be this continual fight on rates. I hoped that the Rating law would solve it, but the Rating law has not been accompanied with the provision for a fire marshal, and the provision for instruction along the lines of fire protection

and fire prevention in the public schools, and as a result our losses are continually ascending until for this year, 1918, I am afraid we are going to have one of the worst we have had in a long, long time.

General Gose: Mr. Hess, do you figure that a fire marshal law if reasonably enforced would largely decrease the losses?

A. If efficiently enforced, I know of no reason why it should not.

Q. About what percentage would you say? I am simply [fol. 3308] asking for an estimate according to your idea?

A. I couldn't say.

Q. Would it decrease the losses ten per cent?

A. I would hope so.

Q. Twenty?

A. Well, I would be glad if it would decrease them fifty per cent, but I have no idea how much it would.

Q. Well, I assumed that as having studied this question you would have some idea of about the probable result of such a law?

A. I don't know just how it has worked out in other States.

Mr. Leahy: I have all those figures if you want them, General. I have got the comparison before and after the adoption of the fire marshal Act in Ohio, for instance.

General Gose: About how much in percentage does it decrease the loss?

Mr. Leahy: Well, it is over thirty per cent.

Judge Revelle: Depending upon the efficiency of the fire marshal, how much power you give him, upon the force you give him. If you give him power to investigate all suspicious fires and don't stop there, but give him power to require property owners to clean up all fire traps, all rubbish and the debris they permit to accumulate, and require them to improve their chimneys, you give him power that great which is very difficult to get a Legislature to do, why, you can reduce your fire losses one-third.

General Gose: Now, these figures and these photographs introduced in evidence were made up by the individual companies whose names appear upon the photograph?

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[fol. 3309] A. The individual companies made the record from which that was taken.

Q. They each made a separate report and these are photographs which you had taken of such reports?

A. They each made a separate report from which that record was taken and we made the photographs.

Q. Well, do I understand that this is not a photograph of the report which they made?

A. No, that is not. That is a photograph of the figures taken from the report which they made.

Q. You did not photograph the report which they sent to you, but took that report and made up a different report based on their figures, and then photographed the report which you made; is that correct?

A. These figures are taken from the annual sworn statements of the insurance companies and proportioned for Missouri, with a letter from the Company stating that is the way in which those items are apportioned for Missouri, and the figures are photographed from those individual reports of the companies.

Q. Well, did you personally make up the report, or were the reports made in your office from which these photographs are made?

A. No, the reports were made by the companies in their sworn statements—their annual sworn statements.

Q. In other words, you took their annual sworn statements and made up a report from those annual sworn statements, and then had that report which you made from their sworn statements photographed; is that correct?

A. Yes. And our report was made up in the way which the companies stated its items of income and outgo were prorated for Missouri.

General Gose: I believe that is all for the present.

[fol. 3310] Redirect examination by Mr. Leahy:

Q. Mr. Hess, have you available a list showing the market price of stocks of the twenty-seven companies mentioned on the list given you by the Attorney-General?

A. I think I can secure that.

Q. As of January 1, 1917?

A. I think so.

Q. Well, we would like leave then to attach that, and that will be all.

Judge Revelle: Mr. Hess, isn't what you said relative to dwellings likewise applicable to preferred risks generally; that is, that dwellings, or on any other preferred, or any preferred risk, it required some character of inspection on the part of the agent, that is a risk that carries a high rate on it, does it not?

A. As a rule, yes, sir.

Q. Now, you take a preferred risk—take a sprinklered risk, an inspection on the part of the agent of that, is necessary before he writes it?

A. Yes.

Q. His company, at least, requires that of him whether he does it or not?

A. Yes, sir.

Q. Now, in those cases—isn't it in those cases of where the rate is very low that the higher agency commission is paid?

A. I believe so.

Q. Mr. Hess, with the force that you have available in your department, and the force that you could reasonably make available, how long would it take you to start out in the State of Missouri and specifically rate every risk in this State?

[fol. 3311] A. We actually tried that in 1911 and 1912 and it took us over two years.

Q. Now, if you were to undertake to cover these additional hazards that have been created as the result of the war, I mean the additional specific hazards that you make specific charges and credits for, if you would undertake to cover this abnormal condition by a re-rating in this State, you could not do it under present conditions under three years, could you?

A. It would take us at least two I should say with our depleted force.

Q. And then by the time that you had gotten through with that re-rating of the State, the risks that you had first rated would be two years back?

A. Yes, sir.

Q. And such additional hazards as had come into existence during that period, for you to get the benefit of an in-

creased rate because of those increased hazards, you would have to start right back and keep re-rating constantly, would you not?

A. Yes, sir.

Q. Can you in the very nature of things make your rate within anything like a reasonable time, a sufficient rate, by re-rating the State on specific risks, so as to meet the present abnormal conditions?

A. No, sir.

Q. You cannot do it through your system of specific rates?

A. No, sir. The conditions are shown by the fact that the losses for 1917 jumped up approximately $2,000,000 over the preceding year in Missouri alone, as I previously stated.

Judge Revelle: That is all.

Mr. Leahy: That is all.

Judge Revelle: Well, we will want to offer the record of [fol. 3312] what the capital and surplus of the various companies doing business in this State is, both separately and collectively; and also a showing as to what the value of the stock of those companies is, for the purpose of showing how much money is actually engaged in conducting this fire insurance business in the State of Missouri, and the country at large.

Mr. Leahy: That is all, Mr. Hess.

Witness excused.

Judge Revelle: It is time to adjourn now.

General Gose: I am ready.

Mr. Leahy: When and where will it suit you gentlemen to meet next?

The Commissioner: Fix the date for your own convenience. Any date will be satisfactory to me.

(Thereupon, it was agreed between counsel that the next hearing of said matter would be held in Jefferson City, Missouri, on Monday, the 30th day of September, 1918; whereupon this hearing adjourned.)

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

STATE OF MISSOURI at the Relation of JAMES A. WATERWORTH and HAROLD M. HESS, Relators,

vs.

A. L. HARTY, Superintendent of the Insurance Department of the State of Missouri, Respondent.

In the Matter of the Fourth Hearing of the Above-entitled Cause Before the Hon. Roy D. Williams, Commissioner.

Thereafter, to-wit, on Tuesday, the 1st day of October, 1918, the date heretofore agreed upon at the adjournment of the last hearing herein as Monday, the 30th day of Sep- [fol. 3313] tember, 1918, by agreement of counsel and the Commissioner having been reset for Tuesday, the 1st day of October, 1918, the further hearing of testimony was resumed in said cause before Commissioner Roy D. Williams, in the City of Jefferson, State of Missouri, at the office of the Superintendent of the Insurance Department of the State of Missouri, all the parties being present in person and by counsel that were present on all previous hearings held in this matter, and the following proceedings were had therein, as follows, to-wit:

The Commissioner: Let us proceed, gentlemen.

Mr. Leahy: We indicated at the last hearing that we would offer a statement of the book value and the market value of the stocks of certain insurance companies that were inquired into, that for the reason that the Attorney-General interrogated some of these witnesses with reference to dividends, notably the Hartford Insurance Company, as to an eight hundred thousand dollar dividend I think it was.

The Commissioner: Yes.

Mr. Leahy: So we thought that perhaps the court might not be misled by the size of that dividend in showing what they paid for.

The Commissioner: Now, you are going to put in the market value of all these insurance companies that are represented here?

Mr. Leahy: No; there were certain notable companies——

The Commissioner: Yes, I know.

Mr. Leahy: —a list of which we had.

Mr. Harold M. Hess: We have included here all the American companies in that list of twenty-seven that the Attorney-General picked out.

Judge Revelle: That is including all the——

[fol. 3314] Mr. Leahy: All the companies that are incorporated under the laws of the United States, in whatever State they may be.

Judge Revelle: That is not all the twenty-seven companies that have been referred to.

Mr. Leahy: We haven't taken many English companies.

Judge Revelle: No. I think of the twenty-seven American companies which we have named there are——

Mr. Hess: I think there are twenty-one here.

The Commissioner: There was some evidence that one company was practically the same as another when it came to earnings and ratio and things of that kind.

Mr. Leahy: There are twenty-one on this list. Now, I would like to put this memoranda that Mr. Hess has prepared into the record (reading memoranda), "The above companies are mostly large companies with large assets. Dividends of many other companies——"

General Gose (interrupting): Are you going to put him on the stand?

Mr. Leahy: If you desire.

General Gose: We might want to question him about it.

Mr. Leahy: Well, if you desire we will recall him.

General Gose: You will have to put him on the stand and have him identify it anyhow, won't you? Let him tell what it is and explain it.

Mr. Leahy: The General might want to cross-examine you on it, so you just take the stand again, Mr. Hess.

The Commissioner: Just take this chair, Mr. Hess.

[fol. 3315] Harold M. Hess, one of the Relators, recalled as a witness on behalf of the Relators, upon examination testified as follows, to-wit:

Direct examination by Mr. Leahy:

Q. Mr. Hess, you have been sworn heretofore and testified in this hearing?

A. Yes, sir.

Q. And at the conclusion of the last hearing we indicated on behalf of the companies we would introduce a statement showing the dividends, book value and market value of the companies that are included in the list furnished by the Attorney-General about which he desired certain information. Now, I show you herewith a paper and ask you if that is the paper that you have prepared with reference to the dividends, book value and market value of the companies incorporated under the laws of any of the States of the United States included in the list given by the Attorney General?

A. Yes, sir.

Q. Now, have you examined a number of companies in addition to this list to ascertain what dividends they pay?

A. Yes, sir.

Q. Will you please state what the result of your examination was?

A. Of these twenty-one companies, American companies, that we have given the annual dividend for in 1916, and the book value of the stock as of January 1, 1917, and the latest sales prices of the stock prior to January 1, 1917, in addition to those companies I looked over the records for all the companies doing business and noted particularly that these twenty-one companies were mostly large companies [fol. 3316] with large assets, that their dividends were large, higher than the average; for instance, I noted that the dividends of many other companies were ten per cent or less, and in order to get as much information on that point as possible I took a summary for the two hundred and thirteen companies doing business in 1916, and noted that of those two hundred and thirteen companies fifty-six had dividends of five per cent or less; ninety-seven companies had dividends of over five per cent and not over ten per cent; and that sixty companies had dividends of over ten per cent. I also noted in this same connection that the seventy stock fire and marine insurance companies of the United States—that seventy of such companies in the United States retired from business during the five years ending 1917, and found that the companies retiring, the number of companies retiring by years were as follows: 1913, thirty-two companies; 1914, thirteen companies; 1915, eleven companies; 1916, seven companies; 1917, seven companies; making a total of seventy companies.

Q. When you say "retiring," what do you mean?

A. Going out of business; either being reinsured in other companies, or paying off their policyholders and quitting business entirely.

Q. You have epitomized the information you have secured by this investigation on a paper, have you?

A. Yes, sir.

Q. And you are reading from that paper?

A. Yes, sir.

Mr. Leahy: I would like to have that paper marked as an exhibit.

(Said paper was here marked, for the purposes of identification, as the Relators' Exhibit 36).

Mr. Leahy: And have it made a part of the record.

[fol. 3317] (Said Exhibit 36, just identified, now desired made a part of this record, being in the words and figures following, to-wit:)

Exhibit 36

"Fire Insurance Stocks of Twenty-one Companies Selected by Attorney-General

Company	Annual div. in 1916	Book value 1-1-1917	Latest sale of stocks, %
Aetna	20	$270 07	410
American of Newark	32	495 14	730
American Central	3	203 01	
Boston	24	368 22	8
Connecticut	20	282 99	
Continental	10	224 14	216½
Fidelity-Phenix	20	342 93	360
Fire Association	40	435 44	340
Firemen's of Newark	24	295 94	420
Great American	30	655 84	510
Glen Falls	37	571 46	730
Hartford	40	484 11	700
Home	22	314 35	485
Insurance Company of N. A.	12	271 10	260
National of Hartford	20	286 73	385
Niagara	25	406 57	365

Company	Annual div. in 1916	Book value 1-1-1917	Latest sale of stocks, %
Northwestern National	15	304 37	
Phoenix of Hartford	20	324 84	410
Queen	40	617 61	
St. Paul Fire and Marine	25	451 98	
Springfield Fire and Marine	10	197 99	206

[fol. 3318] NOTE.—The above companies are mostly large companies with large assets. Dividends of many other companies are 10% or less. A summary for 213 companies in 1916 is as follows:

Dividends 5% or under.....56 companies
Dividends over 5% and not over 10%.....97 companies
Dividends over 10%.....60 companies

NOTE No. 2.—Seventy joint stock fire and Marine Insurance Companies of the United States (not foreign) have retired from business in last five years as follows:

1913	32
1914	13
1915	11
1916	7
1917	7
Total five years	70."

Mr. Leahy: That is all.
General Gose: Are you through now?
Mr. Leahy: Yes, sir.

Cross-examination by General Gose:

Q. When you say you looked over the records and got this information, Mr. Hess, what records do you refer to?

A. There is a publication, I do not remember the name of it, published I think by "The Spectator Company," some New York publishing concern, that gives a summary of the reports for all the fire insurance companies, covering the dividends and other information that I have summarized in this paper for all those companies. I believe that is an [fol. 3319] annual publication and have every reason to

believe that it is regarded as entirely authentic, the date being taken from the sworn returns of the companies to the Insurance Departments on the blanks specified by the Insurance Commissioners.

Q. Now, in this first column in Exhibit 36, those figures represent the percentage of dividends?

A. I beg your pardon, I didn't hear that.

General Gose: Read him the question.

A. (Read by reporter.) Now, in this first column in Exhibit 36, those figures represent the percentage of dividends?

The Witness: Yes, that is the annual dividend.

General Gose: In other words, the annual dividend on the par value of the Aetna Insurance Company for 1916 was 20 per cent?

A. On the par value of the stock.

Judge Revelle: Of the capital?

A. Of the capital.

General Gose: Capital stock?

A. Yes, sir; capital stock.

Judge Revelle: Without any regard to the surplus?

A. No.

Q. Or undivided profits?

A. No.

Q. That is the percentage of the capital stock?

A. Yes, sir.

General Gose: Mr. Hess, in October, 1917, your Inspection Bureau applied for the acceptance of the standardized term rule, did it not?

A. Yes, sir.

Q. And that rule was adopted?

A. Yes, sir.

Q. And by reason of its adoption and being put in force your annual multiple for term insurance was changed from [fol. 3220] one and a half to one and three-fourths times the annual estimate for two years?

A. Yes, sir.

Q. And from two to two and one-half times the annual estimate for three years?

A. Yes, sir.

Q. From two and one-half to three and one-quarter times the annual estimate for four years?

A. Yes, sir.

Q. And from three to four for five years?

A. From four to five—three to four, I beg you pardon.

Q. Three to four for five years?

A. Yes, sir.

Q. Now, you made a calculation, did you not, of the increase that would result from such term rule being placed in force?

A. I approximated it.

Q. Yes, sir.

A. As best I could.

Q. Yes, sir. And after making all allowances and averaging the increase you arrived at the conclusion that the increase upon dwelling insurance would be about sixteen per cent, did you not?

A. Yes, sir.

Q. And that the increase on public buildings would be twenty-two per cent, did you not?

A. Approximately, yes, sir.

Q. Yes. This calculation was made upon the dwelling insurance for the year 1916, and the public building insurance for the year 1916?

A. Yes, which were the last available figures that we had at that time.

Q. Yes. And you figured that that would amount to something over $366,000, did you not?

[fol. 3321] A. Yes, sir.

Q. Now, did you approximate what increase there would be by reason of the ten per cent increase in basis rates on all frame buildings except the dwelling class?

A. On account of the change in basis rate?

Q. Yes, sir.

A. No, I did not, for the reason that that caused no immediate change in the rates.

Q. That would come gradually?

A. It would come gradually as risks would be re-rated and then, of course, not until the policies expiring—policies in force had expired and had been renewed.

Q. I understand.

A. You see that made no re-rating on account of this change in the basis rate.

Q. And there is no way to determine accurately and definitely what the increase will be by virtue of these new rates until you have had the actual experience?

A. On frame buildings?

Q. Yes, sir.

A. You are referring to now?

Q. Yes.

A. Oh, yes, you can tell absolutely accurately what the result will be. The change in basis rate from 95 to 105—from the 95 to the 105 table will produce an advance of ten points in the basis rate, or eleven per cent of the basis rate, which will be approximately—will have approximately the same effect on the final rates on frame buildings if we could cover the entire State immediately and re-rate them all at once.

Q. What I mean, Mr. Hess, is this, that you cannot tell now what the actual increase would be because you could [fol. 3522] not tell what would be the amount of the insurance this year; for instance, you do not know how much insurance you will have on that kind of buildings, do you?

A. Oh, yes, our records show the amount of premiums on the frame and mercantile buildings.

Q. It won't be completed, will it, until the end of the year?

A. It will be just as complete, General Gose, as it would for any of those other classes. Your dwelling——

Q. I understand.

A. Possibly I do not understand your question.

Q. You cannot tell exactly what the increase for 1918 will be until you have received all your premiums for 1918 and you make up your final statement for the year, you cannot tell how much money you will have received by reason of that?

A. No. You could tell the percentage.

Q. Yes, the percentage.

A. But you could not tell the amount in dollars and cents.

Q. No. That is what I had reference to.

A. It is interesting to note the experience on those classes upon which the Insurance Department agree with us that an advance should be made. Missouri is peculiar in that it is a State unfortunately that seems to burn up its homes and its school houses and churches and other places of

public gathering. For instance, on these dwellings where the change in term rule gave an advance of about sixteen per cent the experience for six years ended 1915 showed that one hundred and twenty-seven cents had been paid out in losses for every one hundred cents received, which, of course, makes no allowance for expenses on that; for the three years ended 1917 one hundred and thirty-two cents [fol. 3323] has been paid out for every one hundred cents received on premiums; on public buildings the record was nearly as bad; public buildings, of course, including the churches and school houses and court houses, etc. For six years ended 1915 the loss ratio, that is, the number of cents paid out for every cent received was one hundred and thirteen cents paid out for losses, as against one hundred cents received in premiums, and for the three years ending 1917 the record was one hundred and nine cents. Now, to show you the record on frame, mercantile buildings, which evidently persuaded the Insurance Commissioner that the companies were reasonable in their claim for an advance on that class, for six years ended 1915 the loss ratio was one hundred and twenty-four per cent on frame, mercantile buildings, and for 1917 the loss ratio was one hundred and sixteen per cent; that is, for three years ending 1917 the loss ratio was one hundred and sixteen per cent.

Judge Revelle: That is allowing nothing for expenses or profit at all?

A. No, sir. Now, if I may, right in connection with this general subject of the filings of October 1, 1917, I would like to say that the advances approved by the Insurance Department at that time were not what we asked for as being justified by the experience of the preceding five years and, of course, when we found that the Insurance Department could not see its way clear at that time to give us the change that we felt was proper and justified by the experience, there was nothing left for us to do except to accept same and publish same in good faith, or appeal from the decision of the Commissioner. On September 8, 1917, shortly after the filings were accepted by the Insurance Department we wrote the Honorable Walter K. Chorn that [fol. 3324] "we believe we have shown you that the conditions and agreements which you stipulate are such that the

filing of the standardized term rule will not produce the results which we asked in our letter of November 22, 1916. This letter and the exhibits accompanying same showed that even our proposed filings fell far short of producing the results warranted by the preceding five or six years' experience in Missouri. It also showed that we were offering certain reductions on some classes in order to place same on a fair basis with the same classes in other States. It is, therefore, particularly difficult for us to understand your failure to approve our filings as made. We desire, however, to enter the above, and to add further that we shall expect to make application for further increases unless the new filings produce more favorable results than we anticipate, or unless the fire losses are greatly reduced."

Now, I would also like to call your attention to the fact that the changes made on October 1, 1917, were under an application for a change which was made in November, 1916, it being nearly a year from the time that we first made application for a change until the same was approved and published and put into effect.

Mr. Leahy: And was made with the idea of normal conditions?

A. Of course, in November, 1916, there was no anticipation of the changes that have resulted since that time, and as a matter of fact, the losses have jumped up to a very large amount since that time, and we feel that this present application that we have made is based on an entirely different condition than that for which—under which we made application in November, 1916, approximately two years ago. Now, in that calculation that we made as to the results of our changes of October 1, 1917, I would add that [fol. 3325] there were many minor changes, both up and down, in the rates on individual classes that there was no way of approximating the results for, and which I didn't mention. I believe, however, there was one important omission that I should have put in in favor of the State, and which I entirely overlooked, and that was on brick mercantile buildings. You see this new term rule increased the term multiple, that is, the factor used in multiplying the annual rate in order to secure the term rate, and to compensate for that increase in multiple a reduction was

made in the annual rate. In our original request for changes in filings we suggested that that reduction on brick mercantile business eligible to term insurance be made ten per cent, and the percentage approved by the Insurance Department was a fifteen per cent reduction in the annual brick—annual estimate on brick mercantile buildings, so that there still would remain a slight advance on three-year business of brick mercantiles eligible to term insurance. That could be figured out very easily, but from that on hand I don't think would amount to more than $100,000 a year, although I would want to figure that definitely before further testifying. I simply want to mention that and confess that I overlooked that at the time those figures were made, and to suggest if we want to get at the results a little more accurately that that might be figured.

General Gose: Now, in speaking of the losses, I have heard it rumored that there were considerable losses occasioned in St. Louis by reason of a conspiracy between certain agents and certain "fire bugs"; is that true?

A. I do not know anything about that, General Gose.

Q. Well——

A. I would be very much surprised if it were true. My [fol. 3326] personal opinion would be that it were not, but I have no knowledge of it.

Judge Revelle: You would be very glad to have information as to who the parties were, would you not?

A. Yes, sir.

Q. If it is true?

A. Yes, sir.

General Gose: Did you have any trouble with any insurance agents at all in St. Louis, or suspicion any agents in St. Louis in connection with——

A. (Interrupting.) I have read in the papers of certain indictments but I have not personally investigated or know nothing about the circumstances except by hearsay. If there is anything of that kind going on I think we are all unanimous that it should be absolutely stopped and the criminals punished to the fullest extent of the law.

Q. That would be one reason for having a fire marshal, would it?

A. Yes, indeed.

Q. Well, were there, or were there not, a number of fires in St. Louis of incendiary origin the last year or so?

A. I have read in the newspapers of suspicious fires from time to time in St. Louis. I do not recall any large losses, though, in the last year or so where the cause has been suspicious.

Judge Revelle: In that connection, may I ask, isn't it true that the insurance companies, at their own expense, employed representatives and spent money in an effort to ferret out any "fire bugs," whether insurance agents or anybody else, using their own funds for the purpose of investigating and detecting these crimes and punishing the criminals?

A. I don't know anything about that, Judge.

{fol. 3327} Judge Revelle: I will put my associate on the stand to testify to that.

General Gose: Let's not introduce that now.

The Witness: There is one thing additional, General Gose, that I would like to put in about the figures of October 1, 1917; we figured somewhere between $350,000 and $400,000 increase in premiums as the result of those filings and based upon approximately $10,000,000 premiums for 1916, upon which premiums those figures were based——

Q. Yes.

A. —would mean that the change resulted in somewhere between three and one-half and four per cent of the premiums. Now, of course, if we figured that on the 1917 premiums, which were larger, the amount in dollars and cents would probably be greater, but the percentage would have to be the same——

Q. Yes.

A. —on account of the ratio being uniform.

Q. As the premiums increased the actual sum received would increase, but the percentage would remain the same?

A. Yes, sir.

Q. That is true? I believe that is all for the present.

Mr. Leahy: That is all.

Judge Revelle: I want to ask a few questions.

The Commissioner: Very well.

Redirect examination by Judge Revelle:

Q. Mr. Hess, in reference to this filing of October 1, 1917, that was referred to; you have stated, I believe, it was really a filing of October—or November, 1916?

A. November, 1916.

[fol. 3328] Now, at that time that that filing was made, or rather was prepared, you did not prepare it with any view to adjusting the subject of the rates in this State, did you? Was that not made, and intended to be made, merely for the purpose of changing the term rule in this State?

A. That was all, yes, sir.

Q. Now, what States at that time other than Missouri were using the rule that Missouri was using?

A. In October, 1917?

Q. Yes.

A. That were using the old rule?

Q. Yes, using the old rule; any other States?

A. There were very few of them. I cannot give you the accurate list but I think there were not more than two or three.

Q. That was a rule that had been in existence—in force in Missouri for a great many years and was simply one that had not been changed as it had in other States prior to that time?

A. Yes, sir.

Q. And that change was made primarily for the purpose of making the term rule in Missouri conform to the term rule elsewhere, was it not?

A. Yes, sir.

Q. Now, with reference to the ten per cent increase in the basis rate; that increase will not really return any substantial sums to the companies from October, 1917, during the remainder of that year, nor at the end of 1918, and very little during the year 1919?

A. Practically none, because we are doing no general rerating and consequently there is no change in the rates. Keep in mind also, that this change in basis rate applies only to frame mercantile buildings and other frame build-[fol. 3329] ings rated under the mercantile or miscellaneous hazard schedule.

Q. Is it not a fact that such changes as were made in the rates at that time, either in increase or decrease, were made

for the purpose of adjusting the then condition to the new term rule?

A. That was the general object of the change.

Q. These changes were made merely for the purpose of showing that the term rule fit in and didn't work an injustice by reason of the change from the old rule to the more modern rule?

A. Yes, sir.

Q. It was not regarded as a rate proposition in its real sense at all?

A. No, sir. I have here a copy of a statement published by the Insurance Department in announcing to the public these changes of October 1, 1917.

Q. I wish you would read that into the record Mr. Hess?

A. It comments on the changes made for the benefit of the property owners of the State. In this statement Superintendent Chorn is reported as saying, "The average rate per one hundred dollars of insurance in this state is less than that of any State surrounding Missouri, while fire prevention work in this State is more backward than in any of the States except Arkansas. Owing to strict laws in other States we have become a haven for fire-bugs. The average rate per one hundred dollars of insurance from 1910 to 1916 in Illinois was $1.14; in Iowa $1.15; in Arkansas, $1.59; in Kansas, $1.16, while in Missouri it is $.93. The percentages of loss to premiums collected for the same period were, Illinois, 52 per cent; Iowa, 62 per cent; Kansas, 61 per cent; Missouri, 77 per cent." Then he gives a summary of the reductions in rates.

[fol. 3330] Q. That is, reductions following this change—

A. Of October 1, 1917.

Q. Yes.

A. And again I am quoting, "a slight reduction in the annual rates of practically all dwellings."

General Gose: Well, now, of course, I don't think that is competent. I don't know what he is getting into.

Judge Revelle: It is simply a statement that Superintendent Chorn officially issued in connection with the approval of that filing of October, 1917.

General Gose: Just let it be introduced in evidence.

Judge Revelle: Very well. Have you another copy of that? I thought perhaps it might, in its place, be of more

or less interest to the Commissioner to have it read at this time rather than to offer it all and have him read it later.

The Witness: It is only just two or three lines.

The Commissioner: General Gose, he says it is only a line or two. Would it be all right for him to read it?

General Gose: Yes, that is all right, just a line or two.

The Witness: (reading): "Decrease of fifteen per cent from annual rates on brick mercantile buildings without contents; a decrease of twenty per cent on fire proof mercantile building from existing annual rates; a slight decrease in rates on lumber yards, electric light, power and traction schedules. All insurance companies were extremely anxious to secure higher basis tables and rates in all classes in southeastern Missouri because the losses have been so severe in that section, but the Department has insisted on the same treatment for all parts of the State. Buildings, whole wall construction, such as whole cement [fol. 3331] block and whole tile, will receive a radical reduction in rates and are now subject to the same term insurance conditions as solid brick buildings. Automobiles and motorcycle risks are also generally reduced and a modification of the wood work schedule has been made.

Judge Revelle: Now, Mr. Hess, is it, or is it not, also a fact that at the time that change was made in the term rule that certain classes of property were given the benefit of term insurance and term rates, which under the old rule were not given the benefit of term insurance, or rather the term reduced rate?

A. Yes, sir; such as whole cement block and whole tile mercantile buildings that before that time had only been eligible to annual insurance.

Q. Now, may I ask you, whether or not any of the conditions which have been referred to from time to time in the evidence as having been the outgrowth of the war and the abnormal things prevailing now, whether any of those things were considered as an element of the filing of October 1, 1917?

A. Absolutely not.

Judge Revelle: I think that is all.

Mr. Leahy: That is all.

Witness excused.

General Gose: Now, you gentlemen stated you were going to introduce some evidence or the record of the hearing had here before the Superintendent of Insurance; are you going to do that?

Judge Revelle: Well, now, we have no objection whatever if the Attorney-General desires to offer the record in this case, the transcript of the proceedings had at that time. Of course, our position is that it is of no weight, no force, not even competent evidence, but we have no objection if you want that in to it being in, and I think we have [fol. 3332] a transcript complete of that and would be very glad to provide it.

General Gose: I understood when we were making our objection to certain evidence that you stated in the hearing before the Commissioner that you would introduce this evidence to show exactly what took place before the Insurance Commissioner.

Mr. Leahy: That is correct. Your objection in a number of instances was that the testimony adduced in this hearing was not competent because it had not been presented to the Commissioner.

The Commissioner: The Superintendent.

Mr. Leahy: Or the Superintendent. Now, we have that testimony; we are p-epared to introduce it in evidence. You believe that there is any weight to that objection?

General Gose: Well, we do. That is one of our points, and as you said you were going to introduce it I wish you would, so the whole thing can be before the court.

Judge Revelle: Of course, we will introduce it out of courtesy and in response to the wishes of the Attorney-General, taking the position, however, that it is wholly incompetent and that it has no place in this record. I merely make that statement, not with a view to having it excluded——

The Commissioner: I see.

Judge Revelle: —when we offer it, but with a view to making our position clear on the matter.

The Commissioner: You offer it and then object to it as being incompetent at the same time, and your statement saves you on that.

Judge Revelle: I make that explanation so as to not only explain that inconsistency, but we are very generous with

[fol. 3333] the Attorney-General and we are willing for him to have anything he wants, even when we don't think it is competent.

Mr. Leahy: I will give this to Mr. Bybee.

The Commissioner: Let the record show what then? What do you want the record to show?

Mr. Leahy: Still protesting that the evidence is not competent, but as a manifestation of our extreme fairness that all the light be shed on the whole proposition which the Attorney-General may desire.

General Gose: I suggest that you introduce it.

The Commissioner: Have you the record now as you want?

Mr. Leahy: Yes, sir; yes, sir. It will make a voluminous record.

The Commissioner: Yes, it will. General Gose, is it your contention that only the same evidence can be introduced now; in other words, that it cannot be amplified evidence?

General Gose: It cannot be amplified by any additional evidence.

Judge Revelle: In other words, you are contending we are strictly on certiorari.

General Gose: Well, sir, to tell you the truth about it, I don't know what you are on.

Judge Revelle: Well, you know there always has to be somebody to blaze the way in these hearings and we have no precedent for this. One grand thing about our code is letting you state your facts and allowing the court to determine what your action is. You don't lose out by misbranding it.

The Commissioner: Is there any State that has a law similar to ours in which you have had a similar proceeding?

Judge Revelle: Some of the states, four or five of them, have provisions somewhat similar, but their statute is more [fol. 3334] explicit, more expressly provides just what the course of procedure shall be. Ours mentions the fact that you shall have the right to review de novo.

The Commissioner: Yes. I thought maybe it was copied from some State.

Judge Revelle: No, no. I think I take credit for saying counsel acted as the original one.

The Commissioner: Very well; proceed.

(Said transcript of the evidence adduced in this matter when the same was heard by the Superintendent of Insurance, being offered now in evidence, is here marked for the purposes of identification as the Relators' Exhibit 37, the same being and appearing in the words and figures following, to-wit:)

RELATORS' EXHIBIT 37

"In the Matter of the Filing Made by JAMES A. WATERWORTH and HAROLD M. HESS, Attorneys-in-fact, of All of the Stock Companies Doing a Fire, Lightning, and Windstorm Insurance Business in the State of Missouri, for a Flat Increase of the Rate of 10%.

Before Claude L. Clarke, Acting Superintendent of the Insurance Department of the State of Missouri, April 5th, 1918

This is in the matter of the filing made by James A. Waterworth and Harold M. Hess, Attorneys-in-fact of all of the Stock Companies doing a fire, lightning and windstorm insurance business in the State of Missouri, for a flat increase of the rate of 10% and the reasons assigned for the increase in the rates are as follows:

First. Under the war revenue acts of September, 1916, and October, 1917, six separate and distinct taxes are imposed by the Government on the Insurance Companies for [fol. 3335] which Messrs. Waterworth & Hess are Attorneys-in-fact as follows:

(a) Capital stock tax.
(b) Corporation income tax.
(c) Excess profits tax.
(d) Premium tax.
(e) Letter postage, telegraph and telephone messages increase.
(f) Pullman and railroad fares increase.

The aggregate of these additional taxes can not be precisely determined and will vary with different companies but predicated on experience the undersigned believe that the tax will approximately be 3.32% of the net premiums collected on business done in the State of Missouri.

The above tax is in addition to the general taxes, licenses, and fees, federal, state and local which, examination of records show to average about six per cent (6%) on the premiums received.

Second. Increase in the general expense of conducting business:

(a) Increase in salaries.
(b) Increase in the cost of printing and supplies.
(c) Rating Bureau inspection, surveys, protective departments and Fire Prevention Bureau expenses.

The additional cost on the matters included in this second paragraph cannot be definitely determined, but the experience of the undersigned from investigation leads them to believe that it will amount to 1.82% of the net premiums received on business done in Missouri.

Third. Experience shows that eighty per cent (80%) of fire losses in value in Missouri are partial losses, and under the terms of all policies the companies are obliged to [fol. 3336] replace the partial loss or pay the cost of so doing to the assured. Figures from architects and builders will demonstrate:

(a) Increase in the cost of glass since the war began is 140%.
(b) Increase in the cost of iron since the war began is 75%.
(c) Increase in the cost of sheet metal, which includes galvanized iron, copper and tin, since the war began is 83%.
(d) The increase in the cost of brick since the war began is 50%.
(e) The increase in cost of labor since the war began is 20%.
(f) The general increase in the cost of all building construction and labor since the war began is 40%.

By reason of the foregoing the increase in the cost of replacement for partial fire loss figured on the net premiums is 19.2%.

Fourth. Other factors which will materially decrease the net earnings of the companies and increase their losses, which can not however be definitely figured are:

(a) Losses from incendiary fires occasioned by alien enemies.

(b) Losses occasioned by increased physical hazard incident to over time work.

(c) Accumulation of debris, occasioned by sustained effort in turning out war materials.

(d) Lack of facilities for proper fire prevention and inspection on account of the shortage of properly trained men incident to the draft.

[fol. 3337] (e) Increase in hazard incident to extra hours of work and continuous operation of machinery.

(f) Overcrowded condition of freight yards, depots, factories and business houses.

(g) Lack of properly trained men in the fire departments by reason of the army draft.

Fifth. Statistics show that for the past twenty-one years the fire insurance stock companies have operated in Missouri at a loss. The figures of this department show that during the past five years ending 1916 the said companies have operated in this State at an average loss on their fire insurance business of 9% of their total net premiums received on their Missouri business, aggregating four million dollars ($4,000,000.00) for the period.

Sixth. Attention is called to the third paragraph of Supplemental and Additional Reasons for Increase in document filed with the Department in support of filings made March 27th.

By Mr. John S. Leahy: In support of the first and other reasons assigned we desire to offer in evidence the testimony of John H. Carr, Associate Manager of the Hartford Fire Insurance Company and for more than seven years last past has had charge and jurisdiction of said Company's business in the State of Missouri, which said affidavit is marked "Exhibit 1" and is in words and figures as follows, towit:

State of Illinois,
County of Cook, ss:

John H. Carr, being first duly sworn, says he is an Associate Manager of the Hartford Fire Insurance Company, and for more than seven years last past has had

[fol. 3338] charge and jurisdiction of said Company's business in the State of Missouri.

Affiant further says that under the United States War Revenue Acts of September, 1916, and October, 1917, the individual stock tax, the corporation income tax, the excess profits tax, and the premium tax, together with the increase in letter postage, telegraph and telephone messages, and also the increase in Pullman rates and railroad rates, the costs of transacting the business of said Company in the State of Missouri has been increased in the sum of at least six per cent (6%).

This affiant further says that there has also been a great increase in the general expense of conducting said Company's business in the State of Missouri; that the increase in salaries amounts to 12½%; that the increase in the cost of printing and supplies amounts to at least 33⅓%; that the increase in rating bureau inspections, surveys, protective department and fire prevention bureau expenses amounts to 25% and that the additional cost on matters included in this second paragraph, and other items which properly belong thereto, amounts to an increase of at least two per cent, (2%), in the cost of doing business.

Affiant further says that he has carefully investigated the figures and the increased expenses as embraced in the above computations upon the several items hereinbefore mentioned, and that the amount of the increased expenses and increased cost of doing business in the State of Missouri, as hereinbefore stated in percentage, is an understatement rather than an over-statement, as near as the amount can be computed.

This affiant further says that from 70% to 80% of the fire losses in Missouri are partial losses, and under the terms of the policies the Companies are required to replace the [fol. 3339] partial loss, or pay the cost of so doing to the assured, and whilst this affiant is unable to state the exact amount of this increased cost of replacement, still from figures in the office of the Hartfort Fire Insurance Company which he has investigated, he is fully satisfied that the increased cost of material and labor in the last two years in the State of Missouri, amounts to the sum of at least 20% in the cost of replacement.

Affiant further says that after diligent inquiry he is satisfied that this same pro rata increase in the cost of doing a

fire insurance business in the State of Missouri is true as to all other fire insurance companies doing business in said State.

And further affiant saith not.

(Signed) John H. Carr.

Subscribed and sworn to before me this 1st day of April, A. D. 1918. A. C. Brown, Notary Public. My commission expires Sept. 12, 1921. (Seal.)

We further introduce in evidence the affidavit of Mr. P. D. McGregor, Manager of the Queen Insurance Company of America, and has for more than ten years had charge and jurisdiction of said Company's business in the State of Missouri, and ask that his affidavit be marked "Exhibit 2," and is in words and figures as follows, to wit:

State of Illinois,
County of Cook, ss:

P. D. McGregor, being first duly sworn, says he is the Manager of the Queen Insurance Company of America, and for more than ten years last past has had charge and jurisdiction of said Company's business in the State of Missouri. [fol. 3540] Affiant further says that under the United States War Revenue Acts of September, 1916, and October, 1917, the individual stock tax, the corporation income tax, the excess profits tax, and the premium tax, together with the increase in letter postage, telegraph and telephone messages, and also the increase in Pullman rates and railroad rates, the cost of transacting the business of said Company in the Sate of Missouri has been increased in the sum of at least six per cent (6%.)

This affiant further says that there has also been a great increase in the general expense of conducting said Company's business in the State of Missouri; that the increase in salaries amount to 12½%; that the increase in the cost of printing and supplies amounts to at least 33 1-3%; that the increase in rating bureau inspections, surveys, protective department and fire prevention bureau expenses amounts to 25% and that the additional cost on matters included in this second paragraph, and other items which properly belong thereto, amounts to an increase of at least two per cent (2%) in the cost of doing business.

Affiant further says that he has carefully investigated the figures and the increased expenses embraced in the above computations upon the several items hereinbefore mentioned, and that the amount of the increased expenses and increased costs of doing business in the States of Missouri, as hereinbefore stated in percentages, is an under-statement rather than an over-statement as near as the amount can be computed.

This affiant further says that from 70% to 80% of the fire losses in Missouri are partial losses, and under the terms of the policies the Companies are required to replace the partial loss, or pay the cost of so doing to the assured, [fol. 3341] and whilst this affiant is unable to state the exact amount of this increased cost of replacement, still from figures in the office of the Queen Insurance Company of America which he has investigated, he is fully satisfied that the increased cost of material and labor in the last two years in the State of Missouri amounts to the sum of at least twenty per cent (20%) in the cost of replacement.

Affiant further says that after diligent inquiry he is satisfied that this same pro-rata increase in the cost of doing a fire insurance business in the State of Missouri is true as to all other fire insurance companies doing business in said State.

And further affiant saith not.

F. D. McGregor.

Subscribed and sworn to before me this first day of April, A. D. 1918. Jas. J. Gillen, Notary Public. (Seal.)

By John S. Leahy: We further introduce the affidavit of Charles L. Hecox, Manager of the Western Department of the Ohio Farmers Insurance Company, who for more than three years last past has had charge and jurisdiction of said Company's business in the State of Missouri, and ask that this affidavit be marked "Exhibit 3," which said affidavit is in words and figures as follows, to-wit:

State of Illinois,
County of Cook, ss:

Charles L. Hecox, being first duly sworn, deposes and says that he is Manager of the Western Department of the Ohio Farmers Insurance Company, and that for more than

[fol. 3342] three years last past has had charge and jurisdiction of said Company's business in the State of Missouri.

Affiant further says that under the United States War Revenue Acts of September, 1916, and October, 1917, individual Stock Tax, Corporation Income Tax, Excess Profits Tax, and the Premium Tax, together with the increase in letter postage, telegraphic and telephone messages, and also the increase in Pullman rates, railroad rates and hotel charges, the cost of transacting the business of said Company in the State of Missouri has been increased in the sum of at least 6%.

Affiant further says that there has also been a great increase in the general expense of conducting said Company's business in the State of Missouri; that the increase in salaries amounts to about 15%; that the increase in cost of printing and supplies amounts to at least 35%; that the increase in Rating Bureau inspections, surveys, Protective Department and Fire Prevention Bureau expenses amounts to 25%, and that an additional cost on matters included in this second paragraph and other items which properly belong thereto amounts to an increase of more than 2% in the cost of doing business.

Affiant further says that he has carefully investigated the figures and the increased expenses as embraced in the above computation upon the several items hereinbefore mentioned, and that the amount of the increased expenses and increased cost of doing business in the State of Missouri, as hereinbefore stated in percentages, is an understatement rather than an over-statement, as near as the amount can be computed.

This affiant further says that from 75% to 90% of the fire losses of Missouri are partial losses and under the terms of the policies the companies are required to re-[fol. 3343] place the partial losses or pay the cost of so doing to the assured, and whilst this affiant is unable to state the exact amount of this increased cost of replacement, still from figures in the office of the Western Department of the Ohio Farmers Insurance Company at Chicago, which he has investigated, he is fully satisfied that the increased cost of material and labor in the last two years in the State of Missouri amounts to the sum of at least 33 1-3% in the cost of replacement.

Affiant further says that after diligent inquiry he is satisfied that this same pro rata increase in the cost of doing a fire insurance business in the State of Missouri is true as to all other fire insurance companies doing business in said State, and is true as to all fire insurance companies throughout the United States.

Charles L. Hecox.

Subscribed and sworn to before me, this 1st day of April, A. D. 1918. F. J. Buen, Notary Public. (Seal.)

By John S. Leahy: We further introduce in evidence the affidavit of C. H. Coates, Manager of the Western Department of the National Liberty Insurance Company, and as such Manager and as Assistant Manager thereof he, for the past six years, has had charge and jurisdiction of said company's business in the State of Missouri, and ask that this affidavit be marked "Exhibit 4." Said affidavit is in words and figures as follows, to-wit:

State of Illinois,
County of Cook, ss:

C. H. Coates, being first duly sworn, says that he is the manager of the western department of the National [fol. 3344] Liberty Insurance Company (formerly Germania Fire Insurance Company) and as such manager and as assistant manager thereof he, for the past six years, has had charge and jurisdiction of said company's business in the State of Missouri.

Affiant further says that under the United States War Revenue Acts of September, 1916, and October, 1917, the individual stock tax, the corporation income tax, the excess profits tax, and the premium tax, together with the increase in letter postage, telegraph and telephone messages, and also the increase in Pullman rates and railroad rates and hotel charges, the cost of transacting the business of said company in the State of Missouri has bene increased in at least the sum of 6 per cent.

This affiant further says that there has also been a great increase in the general expense of conducting said com-

pany's business in the State of Missouri; that the increase in salaries amounts to 12.5 per cent; that the increase in the cost of printing and supplies amounts to at least 35 per cent; that the increase in rating bureau inspections, surveys, protective department and fire prevention bureau expenses amounts to 25 per cent; and that the additional cost on matters included in this paragraph and other items which properly belong thereto amounts to an increase of at least 2 per cent in the cost of doing business.

Affiant further says that he has carefully investigated the figures and the increased expenses as expressed in the above computation upon the several items hereinbefore mentioned, and that the amount of the increased expenses and increased costs of doing business in the State of Missouri, as hereinbefore stated in percentages, is an under-state-[fol. 3345] ment rather than over-statement as near as the amount can be computed.

This affiant further says that from 70 per cent to 80 per cent of the fire losses in the State of Missouri are partial losses, and under the terms of the policies the companies are required to replace the partial loss or pay the cost of so doing to the assured, and while this affiant is unable to state the exact amount of this increased cost of replacement, still from figures in the office of the National Liberty Insurance Company, which he has investigated, he is fully satisfied that the increased cost of material and labor in the last two years in the State of Missouri amounts to the sum of at least 33⅓ per cent in the cost of replacement.

Affiant further says that after diligent inquiry he is satisfied that this same pro rata increase in the cost of doing a fire insurance business in the State of Missouri is true of all other fire insurance companies doing business in said state, and is true as to all fire insurance companies throughout the United States.

C. H. Coates.

Subscribed and sworn to before me, this 1st day of April, A. D. 1918. W. E. Armstrong, Notary Public. My commission expires May 26, 1919. (Seal.)

By John S. Leahy: We further introduce in evidence the affidavit of W. H. Lininger, Assistant Manager of the Western Department of the Springfield Fire and Marine Insurance Company, who for seven years last past has had charge and jurisdiction of said company's business in the State of Missouri, and ask that it be marked "Exhibit 5." Said affidavit is in words and figures as follows, to-wit:

[fol. 3346] STATE OF ILLINOIS,
County of Cook, ss:

W. H. Lininger, being first duly sworn, says that he is Assistant Manager of the Western Department of the Springfield Fire and Marine Insurance Company, and that for seven years last past he has had charge and jurisdiction of said company's business in the State of Missouri.

Affiant further says that under the United States War Revenue Acts of September, 1916, and October, 1917, the individual stock tax, the corporation income tax, the excess profits tax, and the premium tax, together with the increase in letter postage, telegraph and telephone messages, and also the increase in Pullman rates, railroad rates and hotel charges, the cost of transacting the business of said company in the State of Missouri has been increased in the sum of at least 6 per cent.

Affiant further says that there has also been a great increase in the general expense of conducting said company's business in the State of Missouri; that the increase in salaries amounts to 20 per cent; that the increase in the cost of printing and supplies amounts to at least 35 per cent; that the increase in rating bureau inspections, surveys, protective department and fire prevention bureau expense amounts to 25 per cent; and that the additional cost on matters included in this paragraph and other items which properly belong thereto an increase of at least 2 per cent in the cost of doing business.

Affiant further says that he has carefully investigated the figures and the increased expenses as embraced in the above computations upon the several items hereinbefore [fol. 3347] mentioned and that the amount of the increased expenses and increased cost of doing business in the State of Missouri, as hereinbefore stated in percentages, is an

understatement rather than an over-statement as near as the amount can be computed.

This affiant further says that from 70 per cent to 80 per cent of the fire losses in Missouri are partial losses, and under the terms of the policies the companies are required to replace the partial loss or pay the cost of so doing to the assured, and while this affiant is unable to state the exact amount of this increased cost of replacement, still from figures in the office of the Springfield Fire and Marine Insurance Company which he has investigated he is fully satisfied that the increased cost of material and labor in the last two years in the State of Missouri amounts to at least 30 per cent in cost of replacement.

Affiant further says that after diligent inquiry he is satisfied that this same prorata increase in cost of doing a fire insurance business in the State of Missouri is true as to all other fire insurance companies doing business in said state, and is true as to all fire insurance companies throughout the United States.

W. H. Lininger.

Subscribed and sworn to before me, this 1st day of April, 1918. Leslie P. Voorheis, Notary Public. (Seal.)

By Mr. John S. Leahy: We further introduce in evidence the affidavit of George H. Bell, Assistant General Agent of the National Fire Insurance Company and for more than three years last past has had jurisdiction and charge of said company's business in the State of Missouri, and [fol. 3348] ask that his affidavit be marked "Exhibit 6." Said affidavit is in words and figures as follows, to-wit:

State of Illinois,
County of Cook, ss:

George H. Bell, being first duly sworn, says he is the Assistant General Agent of the National Fire Insurance Company and for more than three years last past has had jurisdiction and charge of said company's business in the State of Missouri.

Affiant further says that under the United States War Revenue Acts of September, 1916, and October, 1917, the

individual stock tax, the corporation income tax, the excess profits tax, and the premium tax, together with the increase in letter postage, telegraph and telephone messages, and also the increase in Pullman rates and railroad rates, the cost of transacting the business of said company in the State of Missouri has been increased in the sum of at least six per cent (6 per cent).

This affiant further says that there has also been a great increase in the general expense of conducting said Company's business in the State of Missouri; that the increase in salaries amounts to 12½ per cent; that the increase in the cost of printing and supplies amounts to at least 33 1-3 per cent; that the increase in rating bureau inspections, surveys, protective department and fire prevention bureau expenses amounts to 25 per cent; and that the additional cost on matters included in this second paragraph and other items which properly belong thereto, amounts to an increase of at least two per cent (2 per cent) in the cost of doing business.

[fol. 3349] Affiant further says that he has carefully investigated the figures and the increased expenses as embraced in the above computations upon the several items hereinbefore mentioned, and that the amount of the increased expenses and increased costs of doing business in the State of Missouri, as hereinbefore stated in percentages, is an under-statement rather than an over-statement as near as the amount can be computed.

This affiant further says that from 70 per cent to 80 per cent of the fire losses in Missouri are partial losses, and under the terms of the policies the companies are required to replace the partial loss, or pay the cost of so doing to the assured, and whilst this affiant is unable to state the exact amount of this increased cost of replacement, still from figures in the office of the National Fire Insurance Company which he has investigated, he is fully satisfied that the increased cost of material and labor in the last two years in the State of Missouri amounts to the sum of at least twenty per cent (20 per cent) in the cost of replacement.

Affiant further says that after diligent inquiry he is satisfied that this same pro rata increase in the cost of doing a fire insurance business in the State of Missouri is true as

to all other fire insurance companies doing business in said State.

And further affiant saith not.

George H. Bell.

Subscribed and sworn to before me, this 1st day of April, A. D. 1918. Alice A. Lacey, Notary Public." (Seal.)

By Mr. John S. Leahy: We further introduce in evidence the affidavit of H. C. Eddy, Resident Secretary of the Commercial Union Assurance Company, and for more than ten [fol. 3350] years last past has had charge and jurisdiction of said Company's business in the State of Missouri, and ask that this affidavit be marked "Exhibit 7." Said affidavit is in words and figures as follows, to-wit:

State of Illinois,
County of Cook, ss:

H. C. Eddy, being duly sworn, says he is the Residence Secretary of the Commercial Union Assurance Company, and for more than ten years last past has had charge and jurisdiction of said company's business in the State of Missouri.

Affiant further says that under the United States War Revenue Acts of September, 1916, and October, 1917, the individual stock tax, the corporation income tax, the excess profits tax, and the premium tax, together with the increase in letter postage, telegraph and telephone messages, and also the increase in Pullman rates and railroad rates, the cost of transacting the business of said Company in the State of Missouri has been increased in the sum of at least six per cent (6 per cent).

This affiant further says that there has also been a great increase in the general expense of conducting said Company's business in the State of Missouri; that the increase in salaries amounts to 12½ per cent; that the increase in the cost of printing and supplies amounts to at least 33 1-3 per cent; that the increase in rating bureau inspections, surveys, protective department and fire prevention bureau expenses amounts to 25 per cent; and that the additional

cost on matters included in this second paragraph, and other items which properly belong thereto, amounts to an [fol. 3351] increase of at least two per cent (2 per cent) in the cost of doing business.

Affiant further says that he has carefully investigated the figures and the increased expenses as embraced in the above computations upon the several items hereinbefore mentioned, and that the amount of the increased expenses and increased costs of doing business in the State of Missouri, as hereinbefore stated in percentages, is an understatement rather than an over-statement as near as the amount can be computed.

This affiant further says that from 70% to 80% of the fire losses in Missouri are partial losses, and under the terms of the policies the Companies are required to replace the partial loss, or pay the cost of so doing to the assured, and whilst this affiant is unable to state the exact amount of this increased cost of replacement, still from figures in the office of the Commercial Union Assurance Company which he has investigated, he is fully satisfied that the increased cost of material and labor in the last two years in the State of Missouri amounts to the sum of at least twenty per cent (20%) in the cost of replacement.

Affiant further says that after diligent inquiry he is satisfied that this same pro rata increase in the cost of doing a fire insurance business in the State of Missouri is true as to all other fire insurance companies doing business in said State.

And further affiant saith not.

H. C. Eddy.

Subscribed and sworn to before me, this 1st day of April, A. D. 1918. E. H. Worthington, Notary Public. My commission expires Aug. 6, 1918. (Seal.)

By Mr. John S. Leahy: We further introduce in evidence the affidavit of Neal Bassett, Manager of the Western De- [fol. 3352] partment of the Firemen's Insurance Company of Newark, New Jersey, who for more than eight years has had charge and jurisdiction of said Company's business in the State of Missouri, and ask that this affidavit be marked

"Exhibit 8." Said affidavit is in words and figures as follows, to-wit:

STATE OF ILLINOIS,
County of Cook, ss:

Neal Bassett, being first duly sworn, deposes and says that he is Manager of the Western Department of the Firemen's Insurance Company of Newark, New Jersey, and that for more than eight years last past he has had charge and jurisdiction of said Company's business in the State of Missouri.

Affiant further says that under the United States War Revenue Acts of September, 1916, and October, 1917, Individual Stock Tax, Corporation Income Tax, Excess Profits Tax, and the Premium Tax, together with the increase in letter postage, telegraphic and telephone messages, and also the increase in Pullman rates, railroad rates and hotel charges, the cost of transacting the business of said Company in the State of Missouri has been increased in the sum of at least six per cent.

Affiant further says that there has also been a great increase in the general expense of conducting said Company's business in the State of Missouri; that the increase in salaries amounts to about fifteen per cent; that the increase in cost of printing and supplies amounts to at least thirty-five per cent; that the increase in Rating Bureau Inspections, surveys, Protective Department and Fire Prevention Bureau expenses amounts to 25%, and that an additional [fol. 2353] cost on matters included in this second paragraph and other items which properly belong thereto amounts to an increase of more than two per cent in the cost of doing business.

Affiant further says that he has carefully investigated the figures and the increased expenses as embraced in the above computation upon the several items hereinbefore mentioned, and that the amount of the increased expenses and increased cost of doing business in the State of Missouri, as hereinbefore stated in percentages, is an under-statement rather than an over-statement, as near as the amount can be computed.

This affiant further says that from seventy five to ninety per cent of the fire losses of Missouri are partial losses and

under the terms of the policies, the companies are required to replace the partial losses or pay the cost of so doing to the assured, and whilst this affiant is unable to state the exact amount of this increased cost of replacement, still from figures in the office of the Western Department of the Firemen's Insurance Company at Chicago, which he has investigated, he is fully satisfied that the increased cost of material and labor in the last two years in the State of Missouri amounts to the sum of at least thirty-three and a third per cent in the cost of replacement.

Affiant further says that after diligent inquiry he is satisfied that this same pro rata increase in the cost of doing a fire insurance business in the State of Missouri is true as to all other fire insurance companies doing business in said State, and is true as to all fire insurance companies throughout the United States.

Neal Bassett.

Subscribed and sworn to before me, this 1st day of April, A. D. 1918. John R. Cooney, Notary Public. (Seal.)

[fol. 3354] By Mr. John S. Leahy: It is alleged as one of the reasons why these companies are entitled to this increase of 10% in the rates, that the cost of replacement in partial losses has increased very materially and that 80% of all losses are partial losses.

We will present testimony here as to the increase in the cost of replacement, first of stocks of merchandise, and second, the increase in the cost of replacement of building materials. Addressing ourselves to the first of these we offer in evidence the affidavit of Murray Carleton, of St. Louis, Missouri, Chairman of the Board of Directors of the Carleton Dry Goods Company showing that since the war began he finds after a careful investigation (which includes one hundred different articles of merchandise) that the cost of merchandise has increased during the period of the war 84%, which affidavit we ask be marked "Exhibit 9." Said affidavit is in words and figures as follows, to-wit:

To whom it may concern:

Murray Carleton, of lawful age, being first duly sworn, on his oath deposes and says:

I have been in the dry goods business in the City of St. Louis for about 40 years. I am at present the Chairman of the Board of Directors of the Carleton Dry Goods Company.

Recently I had an investigation made to ascertain what was the increase in the cost of merchandise during the period since the war began. I find that certain articles have increased as much as 300%. Taking one hundred different articles of merchandise as being representatives of the whole class of dry goods in which we deal, I find that the general average increase in the cost of merchandise during the war period is 84%.

Murray Carleton.

[fol. 3355] Murray Carleton, to me personally known, appeared before me, a notary public, this 4th day of April, A. D. 1918, and made oath that the foregoing statement is true, to the best of his knowledge and belief.

Murray Carleton.

Subscribed and sworn to before me this 4th day of April, 1918. My commission expires September 29, 1919. J. J. Reilly, Notary Public within and for the City of St. Louis, State of Missouri. (Seal.)

By Mr. John S. Leahy: We also offer in evidence to show the increase in the cost of merchandise, the affidavit of Jackson Johnson, who is President of the International Shoe Company, which affidavit we ask to be marked "Exhibit 10." Said affidavit is in words and figures as follows, to-wit:

To whom it may concern:

Jackson Johnson, of lawful age, being first duly sworn, on his oath deposes and says:

I am the President of the International Shoe Company, and have been in the shoe and manufacturing business in St. Louis, Missouri, for about twenty years.

I am familiar with the market price of shoes prior to the beginning of the European war, and am familiar with the present prevailing prices of shoes and the cost of manufacturing same. In my opinion, the cost has increased since the beginning of the war about 50%

Jackson Johnson.

Jackson Johnson, to me personally known, appeared before me, a notary public, this 4th day of April, A. D. 1918, and made oath that the foregoing statement is true, to the [fol. 3356] best of his knowledge and belief.

Jackson Johnson.

Subscribed and sworn to before me this 4th day of April, 1918. My commission expires September 29, 1919. J. J. Reilly, Notary Public within and for the City of St. Louis, State of Missouri. (Seal.)

By Mr. John S. Leahy: We offer in evidence in support of the contention that the cost of building materials used in the replacement of buildings that are partially destroyed by fire has increased since the war began, from 40% to 50%, first the affidavit of F. J. Remmers, President of the F. J. Remmers Contracting and Building Company, of St. Louis, Missouri, which affidavit shows the increase in the cost of building materials of various kinds and gives the general average of these increases which affidavit we ask be marked "Exhibit 11." Said affidavit is in words and figures as follows, to wit:

To whom it may concern:

My name is F. J. Remmers. I am the president of the F. J. Remmers Contracting and Building Company. I have been engaged in the contracting and building business in St. Louis for fifty years. During that period of time I have created and reconstructed some of the largest buildings in St. Louis.

I am familiar with the cost of building material both at the present time and prior to the declaration of war. I have estimated the increase in cost of all materials that go into the construction of buildings; for instance, the in-

crease in the cost of glass since the war began is 140%; the increase in the cost of iron during that period is 75%; [fol. 3357] the increase in the cost of sheet metal, which includes galvanized iron, copper, and tin, during that period, is 83%; the increase in the cost of brick during that period is 50%; for the ordinary building, the increase in the cost of construction during the period, in my opinion, is from 35% to 40%.

F. J. Remmers.

Subscribed and sworn to before me this 25th day of March, 1918. My commission expires September 29, 1919. J. J. Reilly, Notary Public within and for the City of St. Louis, State of Missouri. (Seal.)

By Mr. John S. Leahy: In that connection we offer in evidence the affidavit of Charles B. McCormack, of the firm of Charles B. McCormack & Son, of St. Louis, Missouri, which we ask to have marked "Exhibit 12."

Said affidavit is in words and figures as follows, to wit:

To whom it may concern:

My name is Charles B. McCormack, I am the owner of the firm operating under the name of Charles B. McCormack & Son. I have been in the building and construction business in the City of St. Louis since 1875. I have constructed many large buildings and residences during that period. I am familiar with the costs of materials used in the construction both before and since the war began.

I have recently figured some large buildings in St. Louis to determine the advance in the cost of replacement in St. [fol. 3358] Louis in the past year, and in my opinion the cost of construction has increased since the war began about forty per cent (40%).

Charles B. McCormack.

Subscribed and sworn to before me this 25th day of March, 1918. My commission expires September 29, 1919. J. J. Reilly, Notary Public within and for the City of St. Louis, State of Missouri.

By Mr. John S. Leahy: In support of that contention we offer in evidence the affidavit of James L. Westlake, President of the Westlake Construction Company of St. Louis, Missouri, which we ask to have marked "Exhibit 13." Said affidavit is in words and figures as follows, to-wit:

To whom it may concern:

James L. Westlake, of lawful age, being duly sworn on his oath deposes and says:

My name is James L. Westlake. I reside in St. Louis, Missouri, and am the president of the Westlake Construction Company. I have been actively engaged in the building business in St. Louis for the past twenty years. Through my company I have erected buildings in practically all of the principal cities of the United States.

I am familiar with the prices of building materials both before and since the war began. I have recently completed an investigation to determine the increase in the cost of replacement during the said period, with the result that I find that common labor has increased about 50%; skilled labor about 20%; the cost of steel has increased 100%; lumber from 30% to 40%; castings of all kinds about 80%; glass [fol. 3359] 140%; cement 35%; brick 10%. It is my conviction that the cost of building and labor during said period has increased not less than 30%.

James L. Westlake.

James L. Westlake, to me personally known, appeared before me, a notary public, this 2nd day of April, A. D. 1918, and made oath that the foregoing statement is true, to the best of his knowledge and belief.

James L. Westlake.

Subscribed and sworn to before me this 2nd day of April, 1918. My commission expires September 29, 1919. J. J. Reilly, Notary Public within and for the City of St. Louis, State of Missouri. (Seal.)

By Mr. John S. Leahy: In support of that contention we offer in evidence letter addressed to James A. Waterworth, by Moran, Russell & Crowell, which we ask to have marked "Exhibit 14."

Said letter is in words and figures as follows, to-wit:

[fol. 3360] Moran, Russell & Crowell, Architects, Chemical Bldg., St. Louis

March 25th, 1918.

Jas. A. Waterworth, Esq., Missouri Inspection Bureau, Pierce Bldg., St. Louis Missouri.

Dear Sir: Pursuant to your inquiry of even date, we beg to state that in our opinion during the last three and one-half years, building costs have advanced about as follows:

From twenty per cent up to forty-five per cent, depending upon the extent to which metals are employed therein, as for instance, structural and reinforcing steel, wiring, heating and plumbing.

Between the minimum and maximum above notes, it is our opinion that the great bulk of buildings subject to replacement on account of fire losses would average an increase in the period mentioned of approximately thirty per cent.

Trusting this gives you the information you desire, we remain

Yours very truly, Moran, Russell & Crowell.

By Mr. John S. Leahy: We offer in evidence the affidavit of George Cook of Minneapolis, Minn., in support of our contention that the increase in the cost of building materials since the war began has been from 40% to 50%, and ask that this affidavit be marked "Exhibit 15."

Said affidavit is in words and figures as follows, to-wit:

[fol. 3361] To whom it may concern:

My name is George Cook. I have been in the building and contracting business in the city of Minneapolis, Minn., for a period of 29 years, during which time I have constructed many of the large buildings in said City and State.

I am familiar with the cost of materials used in construction of building at the present time, and at times prior to the declaration of war.

Since the declaration of war the cost of steel has increased about 120%; the cost of mill-work, including glass, has increased 40%; the cost of plumbing has increased 60%; and my investigation leads me to believe that the general cost of building materials and labor has increased since the declaration of war about 30%, and the general increased cost of repair work during said period has been 38%.

George Cook.

Subscribed and sworn to before me, a notary public for and within the County of Hennepin, this 2nd day of April, 1918. D. B. Green, Notary Public. My term expires the 15th day of June, 1918. [Seal.]

By Mr. John S. Leahy: We offer in evidence statement of Geo. A. Fuller of the George A. Fuller Construction Co., of Kansas City, Missouri, in support of our contention that the increase in the cost of building materials since the war began has been from 40% to 50%, and ask that this statement be marked "Exhibit 16."

Said statement is in words and figures as follows, to-wit:

[fol. 3362] Geo. A. Fuller Construction Co., 418-19 Dwight Bldg., Kansas City, Mo.

March 30th, 1918.

Western Adjustment and Inspection Company, Kansas City, Mo.

Gentlemen: In reply to yours of the 29th inst., we wish to advise the following, as these figures are only approximate they are reasonably correct in common class work and vary considerable for fancy and difficult work.

Brick work 35% increase from 1915 to date.

Concrete work 40% to 60%, depending upon class, whether bulk or frame work.

Steel work. Structural steel 110%, reinforcing 100%.

Sheet metal work, 40%.

Dimension lumber 60 to 75%.
Millwork 20 to 25%, depending upon class of material.
Labor 20 to 30%.
Painting 30 to 40%.
Marble work, domestic, 25%.

Very truly yours, Geo. A. Fuller Construction Co., by F. N. Warner, Manager.

By Mr. John S. Leahy: We offer in evidence the affidavit of Theodore G. Schweiger of Kansas City, Missouri, in support of our contention that the cost of replacement of building material during the war period has increased from 40 [fol. 3363] to 50%, and ask that this affidavit be marked "Exhibit 17."

Said affidavit is in words and figures as follows, to-wit:

To whom it may concern:

My name is Theodore G. Schweiger. I have been in the building and contracting business in the city of Kansas City, Missouri, for a period of 28 years, during which time I have constructed many buildings in said city and done a very large amount of building repair work. I am familiar with the cost of materials used in construction of buildings at the present time and at times prior to the declaration of war.

Since the declaration of war the cost of steel has increased about 100%; the cost of millwork has increased about 50%; the cost of cast iron has increased about 85%; the cost of plumbing has increased (and hauling) about 100%; and my investigation leads me to believe that the general cost of building materials and labor has increased since the declaration of war about 45%, and the general increased cost of repair work during said period has been about 50%; the increased cost of electric work during this period has been about 100%.

T. G. Schweiger.

Subscribed and sworn to before me, a notary public for and within the count- of Jackson and State of Missouri, this 1st day of April, 1918. Myrtle DeWitt, Notary Public. My commission expires January 20, 1920. [Seal.]

By Mr. John S. Leahy: We offer in evidence the affidavit of Godfrey Swenson of Kansas City, Missouri, in sup-
[fol. 3364] port of our contention that the cost of building material during the war period has increased 40 to 50%, and ask that this affidavit be marked "Exhibit 18."

Said affidavit is in words and figures as follows, to-wit:

To whom it may concern:

My name is Godfrey Swenson. I have been in the building and contracting business in the city of Kansas City, Missouri, for a period of 16 years, during which time I have constructed many of the large buildings in said city and state. I am familiar with the cost of materials used in construction of building at the present time, and at times prior to the declaration of war.

Since the declaration of war the cost of steel has increased about 100%; the cost of millwork has increased 60%; the cost of cast iron has increased 90%; the cost of plumbing and heating has increased 100%, and my investigation leads me to believe that the general cost of building materials and labor has increased since the declaration of war about 40%, and the general increased cost of repair work during said period has been 40%, and of electric work 125%.

Godfrey Swenson.

Subscribed and sworn to before me, a notary public for and within the county of Jackson, Missouri, this 1st day of April, 1918. Frank W. Walker, Notary Public. My term expires 6th day of February, 1919. (Seal.)

By Mr. John S. Leahy: We offer in evidence the affidavit of H. N. Leighton, of Minneapolis, Minn., in support of our contention that the cost of building material during the war
[fol. 3365] period has increased from 40 to 50%, and ask that this affidavit be marked 'Exhibit 19."

Said affidavit is in words and figures as follows, to-wit:

To whom it may concern:

My name is H. N. Leighton: I have been in the building and contracting business in the city of Minneapolis for a period of 35 years, during which time I have constructed many of the large buildings in said city and state. I am familiar with the cost of materials used in construction of buildings at the present time, and at times prior to the declaration of war.

Since the declaration of war the cost of steel has increased about 100%; the cost of millwork has increased 30-32%; plate glass 100%; D. S. glass 150%; the cost of cast iron has increased 100%; the cost of plumbing has increased 100%; and my investigation leads me to believe that the general cost of building materials and labor has increased since the declaration of war about 25-30%, and the general increased cost of repair work during said period has been 25-30%.

H. N. Leighton.

Subscribed and sworn to before me, a notary public for and within the State of Minnesota, Hennepin county, this 1st day of April, 1918. Louis L. Leighton, Notary Public. My term expires 11th day of November, 1921. (Seal.)

By Mr. John S. Leahy: We offer in evidence the affidavit of Thomas Thorburn, of Duluth, Minnesota, in support of our contention that the cost of building material and labor since the war began has increased from 40 to 50%, and [fol. 3366] ask that this affidavit be marked "Exhibit 20."

Said affidavit is in words and figures as follows, to-wit:

To whom it may concern:

My name is Thomas Thorburn. I have been in the building and contracting business in the city of Duluth, Minnesota, for a period of 29 years, during which time I have constructed many of the large buildings of said city and state. I am familiar with the cost of materials used in construction of buildings at the present time, and at times prior to the declaration of war.

Since the declaration of war the cost of steel has increased about 300%; the cost of mill-work has increased 25%; the cost of cast iron has increased 100%; the cost of plumbing has increased 35%, and my investigation leads me to believe that the general cost of building materials and labor has increased since the declaration of war about 30%, and the general increased cost of repair work during said period has been 30%. Heating 80%.

Thomas Thorburn.

Subscribed and sworn to before me, a notary public for and within the county of St. Louis and State of Minnesota, this 1st day of April, 1918. F. G. Warner, Notary Public. My term expires 15th day of February, 1922. (Seal.)

By Mr. John S. Leahy: We offer in evidence the affidavit of Henry Fee, of Duluth, Minnesota, in support of our contention that the cost of building material since the war began has increased from 40 to 50% and ask that this affidavit be marked "Exhibit 21."

Said affidavit is in words and figures as follows, to-wit:

[fol. 3367] To whom it may concern:

My name is Henry Fee. I have been in the building and contracting business in the city of Duluth, Minn., for a period of thirty years, during which time I have constructed many of the large buildings in said city and state. I am familiar with the cost of materials used in construction of building at the present time, and at times prior to the declaration of war.

Since the declaration of war the cost of steel has increased about 30%; the cost of millwork has increased 35%; the cost of cast iron has increased 20%; the cost of plumbing has increased 50%; and my investigation leads me to believe that the general cost of building materials and labor has increased since the declaration of war about 25%, and the general increased cost of repair work during said period has been 30%.

Henry Fee.

Subscribed and sworn to before me, a notary public for and within the county of St. Louis, State of Minnesota, this 1st day of April, 1918. F. G. Warner, Notary Public. My term expires 15th day of February, 1922. (Seal.)

By Mr. John S. Leahy: We offer in evidence the affidavit of Alexander Anderson, of Duluth, Minn., in support of our contention that the cost of building materials since the war began has increased from 40 to 50%, and ask that this affidavit be marked "Exhibit 22."

Said affidavit is in words and figures as follows, to-wit:

[fol. 3368] To whom it may concern:

My name is Alexander Anderson: I have been in the building and contracting business in the city of Duluth, Minn., for a period of 27 years, during which time I have constructed many of the large buildings in said city and state. I am familiar with the cost of materials used in construction of buildings at the present time, and at times prior to the declaration of war.

Since the declaration of war the cost of steel has increased about 75%; the cost of millwork has increased 30%; the cost of cast iron has increased 75%; the cost of plumbing has increased 50%; and my investigation leads me to believe that the general cost of building materials and labor has increased since the declaration of war about 30%; and the general increased cost of repair work during said period has been 35%.

Alexander Anderson.

Subscribed and sworn to before me, a notary public for and within the county of St. Louis, and State of Minnesota, this 1st day of April, 1918. Thomas S. Wood. Notary Public in and for St. Louis County, Minnesota. My term expires the 1st day of October, 1923.

By Mr. John S. Leahy: We offer in evidence the affidavit of Wm. W. Koeb, of Columbus, Ohio, in support of our contention that the cost of building material since the war

began has increased from 40 to 50%, and ask that this affidavit be marked "Exhibit 23."

Said Exhibit 23 is in words and figures as follows, to-wit:

[fol. 3369] To whom it may concern:

My name is Wm. W. Koeb. I have been in the building and contracting business in the city of Columbus, Ohio, for a period of 16 years, during which time I have constructed many of the large buildings in said city and state. I am familiar with the cost of materials used in construction of buildings at the present time, and at times prior to the declaration of war.

Since the declaration of war the cost of steel has increased about 250%; the cost of millwork has increased 30%; the cost of cast iron has increased 66.66%; the cost of plumbing has increased 35%; and my investigation leads me to believe that the general cost of building materials and labor has increased since the declaration of war about 37%; and the general increased cost of repair work during said period has been 25 to 60%.

Wm. W. Koeb.

Subscribed and sworn to before me, a notary public for and within the —— this 1st day of April, 1918. Frank R. Schwartz, Notary Public. My term expires 20th day of October, 1920. [Seal.]

By Mr. John S. Leahy: We offer in evidence the affidavit of Henry A. Linkenhill, of Columbus, Ohio, in support of our contention that the cost of building material since the war began has increased from 40 to 50%, and ask that this affidavit be marked "Exhibit 24."

Said Exhibit 24 is in words and figures as follows, to-wit:

[fol. 3370] To whom it may concern:

My name is Henry A. Linkenhill, 910 Mohawk St. I have been in the building and contracting business in the city of Columbus, Ohio, for a period of 18 years, during which time I have constructed many of the large buildings in said city and state. I am familiar with the cost of materials

used in construction of buildings at the present time, and at times prior to the declaration of war.

Since the declaration of war the cost of steel has increased about (see note) %; the cost of millwork has increased 28%; the cost of cast iron has increased 33 1-3%; the cost of plumbing has increased 35%; and my investigation leads me to believe that the general cost of building materials and labor has increased since the declaration of war about 25%, and the general increase- cost of repair work during said period has been 29%.

Henry A. Linkenhill.

Subscribed and sworn to before me, a notary public for and within the city of Columbus, Ohio, this 1st day of April, 1918. A. Ray Wells, Notary Public. My term expires the 6th day of October, 1919.

By Mr. John S. Leahy. We offer in evidence the affidavit of J. S. Mardis, of Omaha, Nebraska, in support of our contention that the cost of building material since the war began has increased from 40 to 50%, and ask that this affidavit be marked "Exhibit 25."

Said Exhibit 25 is in words and figures as follows, to-wit:

[fol. 3371] To whom it may concern:

My name is J. S. Mardis. I have been in the building and contracting business in the city of Omaha for a period of 13 years, during which time I have constructed many of the large buildings in said city and state. I am familiar with the cost of materials used in construction of buildings at the present time, and at times prior to the declaration of war.

Since the declaration of war the cost of steel has increased about 100%; the cost of millwork has increased 30%; the cost of cast iron has increased 100%; the cost of plumbing has increased 50%; and my investigation leads me to believe that the general cost of building materials and labor has increased since the declaration of war about 40%, and

the general increased cost of repair work during said period has been 50%.

J. S. Mardis, by J. E. Wakefield, Secretary.

Witness to signature, Frank S. Holmes.

Subscribed and sworn to before me ——.

By Mr. John S. Leahy. We offer in evidence affidavit of John J. Toms, of Omaha, Nebraska, in support of our contention that the cost of building material since the war began has increased from 40 to 50%, and ask that this affidavit be marked "Exhibit 26."

Said Exhibit 26 is in words and figures as follows, to-wit:

[fol. 3372] To whom it may concern:

My name is John J. Toms. I have been in the building and contracting business in the city of Omaha for a period of 30 years, during which time I have constructed many of the large buildings in said city and state. I am familiar with the cost of materials used in construction of buildings at the present time, and at times prior to the declaration of war.

Since the declaration of war the cost of steel has increased about 125%; the cost of millwork has increased 25%; the cost of cast iron has increased 100%; the cost of plumbing has increased 66-2/3%, and my investigation leads me to believe that the general cost of building materials and labor has increased since the declaration of war about 45%, and the general increased cost of repair work during said period has been 60%.

John J. Toms.

Witness to signature: Frank S. Holmes.

By John S. Leahy. We offer in evidence the affidavit of V. R. Gould, of Omaha, Nebraska, in support of our contention that the cost of building material since the war began has increased from 40 to 50%, and ask that this affidavit be marged "Exhibit 27."

Said Exhibit 27 is in words and figures as follows, to-wit:

To whom it may concern:

My name is V. R. Gould. I have been in the building and contracting business in the city of Omaha for a period of 12 years, during which time I have constructed many of the large buildings in said city and state. I am familiar [fol. 3373] with the cost of materials used in construction of buildings at the present time, and at times prior to the declaration of war.

Since the declaration of war the cost of steel has increased about over 100%; the cost of millwork has increased 25%, the cost of cast iron has increased 100%; the cost of plumbing has increased 50%; and my investigation leads me to believe that the general cost of building materials and labor has increased since the declaration of war about 40%; and the general increased cost of repair work during said period has been 50%.

F. P. Gould & Son, by V. R. Gould.

Witness to signature: Frank H. Holmes.

By Mr. John S. Leahy. We offer in evidence the affidavit of J. E. Lovejoy, of Des Moines, Iowa, in support of our contention that the cost of building material since the war began has increased from 40 to 50%, and ask that this affidavit be marked "Exhibit 28."

Said Exhibit 28 is in words and figures as follows, to-wit:

To whom it may concern:

My name is J. E. Lovejoy. I have been in the building and contracting business in the City of Des Moines, Iowa, for a period of 22 years, during which time I have constructed many of the large buildings in said city and state. I am familiar with the cost of materials used in construction of buildings at the present time, and at times prior to the declaration of war.

Since the declaration of war the cost of steel has in- [fol. 3374] creased about 100%; the cost of millwork has increased 40%; the cost of cast iron has increased 60%; the cost of plumbing has increased 35%; and my investigation

leads me to believe that the general cost of building materials and labor has increased since the declaration of war about 40%; and the general increased cost of repair work during said period has been 50%.

J. E. Lovejoy.

Subscribed and sworn to before me, a notary public for and within the county of Polk, this 1st day of April, 1918. Carolina S. De Hann, Notary Public. My term expires 4th day of July, 1918. (Seal.)

By Mr. John S. Leahy. We offer in evidence the affidavit of J. E. Tusant, of Des Moines, Iowa, in support of our contention that the cost of building material since the war began has increased from 40 to 50%, and ask that this affidavit be marked "Exhibit 29."

Said Exhibit 29 is in words and figures as follows, to-wit:

To whom it may concern:

My name is J. E. Tusant. I have been in the building and contracting business in the vity of Des Moines, Iowa, for a period of 31 years, during which time I have constructed many of the large buildings in said city and state. I am familiar with the cost of materials used in construction of building at the preesnt time, and at times prior to the declaration of war.

Since the declaration of war the cost of steel has increased about 100%; the cost of millwork has increased [fol. 3375] 50%; the cost of cast iron has increased 100%; the cost of plumbing has increased 150%, and my investigation leads me to believe that the general cost of building materials and labor has increased since the declaration of war about 35 to 50%, and the general increased cost of repair work during said period has been 75%.

J. E. Tusant.

Subscribed and sworn to before me, a notary public for and within the county of Polk, this 1st day of April, 1918. Carolina S. De Hann, Notary Public. My term expires 4th day of July, 1918. (Seal.)

By Mr. John S. Leahy. We offer in evidence the affidavit of Nicholas J. Westra, of Grand Rapids, Michigan, in support of our contention that the cost of building material since the war began has increased from 40 to 50%, and ask that this affidavit be marked "Exhibit 30."

Said Exhibit 30 is in words and figures as follows: to-wit:

To whom it may concern:

My name is Nicholas J. Westra. I have been in the building and constructing business in the city of Grand Rapids, Michigan, for a period of 20 years, during which time I have constructed many of the large buildings in said city and state. I am familiar with the cost of materials used in construction of buildings at the present time, and at times prior to the declaration of war in 1914.

Since the declaration of war the cost of steel has increased about 100%; the cost of millwork has increased 40%; the cost of cast iron has increased 80%; the cost of [fol. 3376] plumbing has increased 80%; and my investigation leads me to believe that the general cost of building materials and labor has increased since the declaration of war about 60%; and the general increased cost of repair work during said period has been 50%.

Nicholas J. Westra.

Subscribed and sworn to before me, a notary public for and within the State of Michigan, county of Kent, this 1st day of April, 1918. Esther A. Scram, Notary Public. My term expires 16th day of November, 1921. (Seal.)

By Mr. John S. Leahy. We also offer in evidence the affidavit of John C. Gulliford, of Grand Rapids, Michigan, in support of our contention that the cost of building material since the war began has increased from 40 to 50%, and ask that this affidavit be marked "Exhibit 31."

Said Exhibit 31 is in words and figures as follows, to-wit:

To whom it may concern:

My name is John C. Guilliford. I have been in the building and contracting business in the city of Grand Rapids, Michigan, for a period of 23 years, during which time I

have constructed many of the buildings in said city. I am familiar with the cost of materials used in construction of buildings at the present time, and at times prior to the declaration of war, 1914.

Since the decaration of war the cost of steel has increased about 83%; the cost of mill-work has increased 45%; the cost of cast iron has increased 42½%; the cost of plumbing has increased 52%; and my investigation leads me to be- [fol. 3377] lieve that the general cost of building materials and labor has increased since the declaration of war about 45%, and the general increased cost of repair work during said period has been 60%.

John C. Guilliford.

Subscribed and sworn tot before me, a notary public for and within the State of Michigan and county of Kent, this 1st day of April, 1918. Esther A. Scram, Notary Public. My term expires 16th day of Nov., 1921.

By Mr. John S. Leahy: We also offer in evidence the affidavit of David J. Osgood, of Detroit, Michigan, in support of our contention that the cost of building materials since the war began has increased from 40 to 50%, and ask that this affidavit be marked "Exhibit 32."

Said Exhibit 32 is in words and figures as follows, to-wit:

To whom it may concern:

My name is David J. Osgood. I have been in the building and contracting business in the city of Detroit for a period of 16 years, during which time I have constructed many of the large buildings in said city and State. I am familiar with the cost of materials used in construction of buildings at the present time, and at times prior to the declaration of war.

Since the declaration of war the cost of steel has increased about 20%; the cost of mill-work has increased 25%; the cost of cast iron has increased 20%; the cost of plumbing has increased 50%; and my investigation leads me to believe that the general cost of building materials and [fol. 3378] labor has increased since the declaration of war

about 35%, and the general increased cost of repair work during said period has been 40%.

David J. Osgood.

Subscribed and sworn to before me, a notary public for and within the county of Wayne, this first day of April, 1918. Mary Leahy, Notary Public. My term expires 23rd day of May, 1921.

By Mr. John S. Leahy: We also offer in evidence the affidavit of Maynard D. Smith, of Port Huron and Detroit, in support of our contention that the cost of building material since the war began has increased from 40 to 50%, and ask that this affidavit be marked "Exhibit 33."

Said affidavit marked Exhibit 33 is in words and figures as follows, to-wit:

To whom it may concern:

My name is Maynard D. Smith. I have been in the building and contracting business in the city of Port Huron and Detroit for a period of 25 years, during which time I have constructed many of the large buildings in said city and State. I am familiar with the cost of materials used in construction of building at the present time, and at times prior to the declaration of war.

Since the declaration of war the cost of steel has increased about 100%; the cost of mill-work has increased 30%; the cost of cast iron has increased 100%; the cost of plumbing has increased 50%; and my investigation leads me to believe that the general cost of building materials and labor has increased since the declaration of war about [fol. 3379] 50-70%, and the general increased cost of repair work during said period has been 50-70%.

Maynard D. Smith.

Subscribed and sworn to before me, a notary public for and within the county of Wayne, this 1st day of April, 1918. Mary Leahy, Notary Public. My term expires 23rd day of May, 1921.

Our records show on completed buildings that the cost is running from 80 to 100% increase over 1913 and 1914.

By Mr. John S. Leahy: We also offer in evidence affidavit of Wm. H. Miller, of Cincinnati, Ohio, in support of our contention that the cost of building material since the war began has increased from 40 to 50%, and ask that this affidavit be marked "Exhibit 34."

Said Exhibit 34 is in words and figures as follows, to-wit:

To whom it may concern:

My name is Wm. H. Miller. I have been in the building and contracting business in the city of Cincinnati, Ohio, for a period of 30 years, during which time I have constructed many of the large buildings in said city and State. I am familiar with the cost of materials used in construction of buildings at the present time, and at times prior to the declaration of war.

Since the declaration of war the cost of steel has increased about 150%; the cost of mill-work has increased 35%; the cost of cast iron has increased 150%; the cost of plumbing has increased 40%; and my investigation leads [fol. 3380] me to believe that the general cost of building materials and labor has increased since the declaration of war about 57%; and the general increased cost of repair work during said period has been 57%.

Wm. H. Miller.

Subscribed and sworn to before me, a notary public for and within the county of Hamilton, this 1st day of April, 1918. Wm. H. Berling, Notary Public. My term expires 26th day of May, 1919.

By Mr. John S. Leahy: We also offer in evidence the affidavit of Wm. B. Barr, of Cincinnati, Ohio, in support of our contention that the cost of building material since the war began has increased from 40 to 50%, and ask that this affidavit be marked "Exhibit 35."

Said Exhibit 35 is in words and figures as follows, to-wit:

To whom it may concern:

My name is Wm. B. Barr. I have been in the building and contracting business in the city of Cincinnati for a period of 25 years, during which time I have constructed many of the large buildings in said city and State. I am familiar with the cost of materials used in construction of buildings at the present time, and at times prior to the declaration of war.

Since the declaration of war the cost of steel has increased about 160%; the cost of mill work has increased 35%; the cost of cast iron has increased 160%; the cost of plumbing has increased 45%; and my investigation leads me to believe that the general cost of building materials and labor has increased since the declaration of war about [fol. 3381] 60%, and the general increased cost of repair work during said period has been 60%.

Wm. B. Barr.

Subscribed and sworn to before me, a notary public for and within the county of Hamilton, this 1st day of April, 1918. Wm. H. Berling, Notary Public. My term expires 26th day of May, 1919.

By Mr. John S. Leahy: We also offer in evidence the affidavit of William Griffith, of Cincinnati, Ohio, in support of our contention that the cost of building material since the war began has increased from 40 to 50%, and ask that this affidavit be marked "Exhibit 36."

Said Exhibit 36 is in words and figures as follows, to-wit:

To whom it may concern:

My name is William Griffith. I have been in the building and contracting business in the city of Cincinnati, Ohio, for a period of 50 years, during which time I have constructed many of the large buildings in said city and State. I am familiar with the cost of materials used in construction of buildings at the present time, and at times prior to the declaration of war.

Since the declaration of war, August, 1914, the cost of steel has increased about 200%; the cost of mill-work has increased 60%; the cost of cast iron has increased 75%; the cost of plumbing has increased 80%; and my investigation leads me to believe that the general cost of building materials and labor has increased since the declaration of [fol. 3382] war about 80%, and the general increased cost of repair work during said period has been 80%.

William Griffith.

Subscribed and sworn to before me, a notary public for and within the county of Hamilton, this 1st day of April, 1918. Wm. H. Berling, Notary Public. My term expires 26th day of May, 1919. (Seal.)

By Mr. John S. Leahy: We offer in evidence the affidavit of Burton B. Chapman, of Cleveland, Ohio, in support of our contention that the cost of building material since the war began has increased from 40 to 50%, and ask that this said affidavit be marked "Exhibit 37."

Said Exhibit 37 is in words and figures as follows, to-wit:

To whom it may concern:

My name is Burton B. Chapman. I have been in the building and contracting business in the city of Cleveland for a period of 20 years, during which time I have constructed many of the large buildings in said city and State. I am familiar with the cost of materials used in construction of buildings at the present time, and at times prior to the declaration of war.

Since the declaration of war the cost of steel has increased about 100%; the cost of mill-work has increased 40%; the cost of cast iron has increased 100%; the cost of plumbing has increased 125%; and my investigation leads me to believe that the general cost of building materials and labor has increased since the declaration of war about 50%, and the general increased cost of repair work during said period has been 70%.

Burton B. Chapman.

[fol. 3383] Subscribed and sworn to before me, a notary public, for and within the county of Cuyahoga, state of Ohio, this 1st day of April, 1918. Jas. H. Schumacher, Notary Public. My term expires 29th day of June, 1920. (Seal.)

By Mr. John S. Leahy: We offer in evidence the affidavit of Geo. A. Rutherford, of Cleveland, Ohio, in support of our contention that the cost of building material since the war began has increased from 40 to 50%, and ask that this affidavit be marked "Exhibit 38."

Said Exhibit 38 is in words and figures as follows, to-wit:

To whom it may concern:

My name is Geo. A. Rutherford. I have been in the building and contracting business in the city of Cleveland for a period of 20 years, during which time I have constructed many of the large buildings in said city and State. I am familiar with the cost of materials used in construction of buildings at the present time, and at times prior to the declaration of war.

Since the declaration of war the cost of steel has increased about 150%; the cost of mill-work has increased 40%; the cost of cast iron has increased 100%; the cost of plumbing has increased 60%; and my investigation leads me to believe that the general cost of building materials and labor has increased since the 1914 declaration of war about 45%, and the general increased cost of repair work during said period has been 70%.

Geo. A. Rutherford.

[fol. 3384] Subscribed and sworn to before me, a notary public for and within the county of Cuyahoga, Ohio, this 1st day of April, 1918. F. J. Moffatt, Notary Public. My term expires June 15, 1918. (Seal.)

By Mr. John S. Leahy: We offer in evidence the affidavit of H. C. Struehen, of St. Paul, Minn., in support of our contention that the cost of building material since the

war began has increased from 40 to 50%, and ask that this affidavit be marked "Exhibit 39."

Said Exhibit 39 is in words and figures as follows, to-wit:

To whom it may concern:

My name is H. C. Struchen. I have been in the building and contracting business in the city of St. Paul, Minn., for a period of 13 years, during which time I have constructed many of the large buildings in said city and State. I am familiar with the cost of materials used in construction of buildings at the present time, and at times prior to the declaration of war.

Since the declaration of war the cost of steel has increased about 100%; the cost of mill-work has increased 60 to 80%; the cost of cast iron has increased 80%; the cost of plumbing has increased 40 to 60%; and my investigation leads me to believe that the general cost of building materials and labor has increased since the declaration of war about 50%, and the general increase of repair work during said period has been 50%.

H. C. Struchen.

Subscribed and sworn to before me, a notary public [fol. 3385] for and within the county of Ramney, Minn., this 1st day of April, 1918. D. H. Bradley, Notary Public. My term expires 1st day of February, 1919. (Seal.)

By Mr. John S. Leahy: We offer in evidence the affidavit of George J. Grant, of St. Paul, Minn., in support of our contention that the cost of building material since the war began has increased from 40 to 50%, and ask that this affidavit be marked "Exhibit 40."

Said Exhibit 40 is in words and figures as follows, to-wit:

To whom it may concern:

My name is George J. Grant. I have been in the building and contracting business in the city of St. Paul, Minn., for a period of 37 years, during which time I have con-

structed many of the large buildings in said city and State. I am familiar with the cost of materials used in construction of buildings at the present time, and at times prior to the declaration of war.

Since the declaration of war the cost of steel has increased about 100%; the cost of mill-work has increased 35%; the cost of cast iron has increased 100%; the cost of plumbing has increased 40%; and my investigation leads me to believe that the general cost of building materials and labor has increased since the declaration of war about 45 to 50%, and the general increased cost of repair work during said period has been 45 to 50%.

Geo. J. Grant.

Subscribed and sworn to before me, a notary public [fol. 3386] for and within the county of Ranney, Minnesota, this 1st day of April, 1918. R. W. Bell, Notary Public. My term expires 1st day of November, 1918. (Seal.)

By Mr. John S. Leahy: We also offer in evidence the affidavit of A. L. Lehr, of the Lehr Construction Company of St. Joseph, Missouri, in support of our contention that the cost of building material since the war began has increased from 40 to 50%, and ask that said affidavit be marked "Exhibit 41."

Said Exhibit 41 is in words and figures as follows, to-wit:

Lehr Construction Co., General Contractors, St. Joseph, Mo.

April, 3, 1918.

St. Joseph Actuary Bureau, City.

Dear Sirs: As per your request today, of the approximate estimate advance in the cost of materials and labor entering into building construction since the war began, I beg to submit the following:

Window glass	140%
Steel	75%
Sheet metal	80 to 85%

Lumber	40%
Brick	50%
Labor	20%

Yours very truly, Lehr Construction Co., by A. L. Lehr, Sect.

[fol. 3387] By Mr. John S. Leahy: We also offer in evidence communication from T. W. Hackett, of St. Joseph, Missouri, in support of our contention that the cost of building material since the war began has increased from 40 to 50%, and ask that this communication be marked "Exhibit 42."

Said Exhibit 42 is in words and figures as follows to-wit:

William Gordon, Architect, St. Joseph, Missouri

April 3, 1918.

Missouri Inspection Bureau, Corby-Forsee Bldg., St. Joseph, Mo.

GENTLEMEN: As per your request of even date, would advise our records show the following approximate increase in cost of materials and labor for building construction during the last four years:

Window glass	140%
Iron	75%
Sheet metal	83%
Brick	50%
Labor	20%

Yours very truly, T. W. Hackett, General Contractor, St. Joseph, Mo.

By Mr. John S. Leahy: We also offer in evidence the communication from P. P. Buddy, of the P. P. Buddy Building and Construction Co., of St. Joseph, Missouri, in support of our contention that the cost of building material [fol. 3388] since the war began has increased from 40 to 50% and ask that this communication be marked "Exhibit 43."

Said Exhibit 43 is in words and figures as follows, to-wit:

P. P. Buddy Building & Construction Co., General Contractors, St. Joseph, Mo.

April 3, 1918.

Missouri Inspection Bureau, Corby-Forsee Building, St. Joseph, Mo.

Gentlemens In compliance with your request, I am pleased to submit herewith approximate increase in cost of materials and labor for building construction since the spring of 1914:

Window glass	140%
Iron	80%
Sheet metal	85%
Brick	50%
Labor	20%

Yours very truly, (Signed) P. P. Buddy Bldg. & Construction Co., by P. P. Buddy.

By Mr. John S. Leahy: We also offer in evidence communication from Ernest Schmitt, of Hannibal, Missouri, in support of our contention that the cost of building material since the war began has increased from 40 to 50%, and ask that this communication be marked "Exhibit 44."

Said Exhibit 44 is in words and figures as follows, to-wit:

[fol. 3389] Ernest Schmitt, Architect, Hannibal, Mo.

Hannibal, Mo., April 1, 1918.

Missouri Inspection Bureau, St. Louis, Mo.

Dear Sirs: Please find below a list of increased cost of building materials at this time and in this locality and just before the present war began:

Portland cement	50%
Lumber	40%
Brick	25%
Structural steel	100%

Sheet metal	90%
Window glass	150%
Linseed oil	150%
Labor	30%

Respectfully submitted, Ernest Schmitt.

Subscribed and sworn to before me this 1st day of April, 1918. James W. Plowman, Notary Public in and for Hannibal, Marion Co., Mo. (Seal.)

By Mr. John S. Leahy: We also offer in evidence the communication of Mr. M. B. Burgher of Burgher Bros., Hannibal, Mo., in support of our contention that the cost of building material since the war began has increased from 40 to 50%, and ask that this communcation be marked "Exhibit 45."

Said Exhibit 45 is in words and figures as follows, to-wit:

[fol. 3390] Burgher Bros., Engineers & Contractors, Hannibal, Mo.

April 1, 1918.

Missouri Inspection Bureau, 1330 Pierce Bldg., St. Louis, Mo.

GENTLEMEN: At the request of Mr. E. H. Greene, your local representative, we are writing you to confirm your statement as to the increased cost of building materials and labor in this locality. In your letter to Mr. Greene, you stated that according to authentic information through contractors in Kansas City and St. Louis, Mo. window glass has increased 140%, iron 75%; sheet metal 83%; brick 50%; labor 20%, and as near as we can calculate, this is a fair representation of conditions in this locality. We might add that in our locality, lumber has increased about 45% and Portland cement about 70%.

Trusting that this information will be of service to you, we hereby set our hand this day and date above mentioned.

Burgher Bros., M. B. Burgher.

Subscribed and sworn to before me this first day of April, 1918. Nellie M. Burbank, Notary Public. [Seal.]

By Mr. John S. Leahy: We also offer in evidence the communication of Malcolm S. Martin, of Hannibal, Missouri, in support of our contention that the cost of building [fol. 3391] material since the war began has increased from 40 to 50%, and ask that this communication be marked "Exhibit 46."

Said Exhibit 46 is in words and figures as follows, to-wit:

April 1, 1918.

Missouri Inspection Bureau, St. Louis, Mo.

GENTLEMEN: Your representative in this territory, Mr. Greene, asked us to give you a synopsis of cost of prewar costs and present day costs of miscellaneous building materials and labor as experienced by us in this territory. We give below a summary of same, together with percentage increases.

	Pre-war scale	Present scale.	Increase
Carpenters	50c per hour	62½c	25 %
Common labor	20c per hr.	30c	50 %
Bricklayers	70c per hr.	80¼c	16¼%
Painters	45c per hr.	55c	22 %
Plasterers	75c per hr.	82½c	10 %
Brick tenders	35c per hr.	42c	20 %
Cement	$1.20 per bbl.	unit 2.10	75 %
1Sin. lumber gen. run	$28.00 per M.	34.00	21 %
Sand	$1.00 per yd.	1.50	50 %
Gravel	$1.00 per yd.	1.50	50 %
Common brick	$8.00 per M.	10.50	31 %
Face	.....	.....	25 %
Structural steel	.....	.....	25 %
Reinforcing	.....	.....	40 %
Roof materials, T & G	$8.00	14.00	83 %
Roof materials, tin	10.50	14.00	33 %
General sheet metal work	.....	.....	45 %
Mill work	.....	.....	30 %
Plaster materials, cement	$7.50 per ton	11.50	53 %
Lime	$7.00 per ton	9.00	29 %
Rough hardware	$3.00	5.00	66 %
Lead and oil	.....	.....	40 %
Heating and plumbing	.....	.....	45 %
Cut stone	.....	.....	25 %

[fol. 3392] The above statement of pre-war and present costs of materials and labor, together with percentage increases is about correct to the best of our knowledge and belief.

Respectfully, Malcolm S. Martin.

State of Missouri,
County of Marion, ss:

Subscribed and sworn to before me this first day of April, 1918.

My commission expires December 14, 1918.

Nellie M. Burbank, Notary Public, Marion county, Missouri.

By Mr. John S. Leahy: We offer in evidence communication of A. C. Michaelis, of Joplin, Missouri, in support of our contention that the cost of building material since the war began has increased from 40 to 50%, and ask that this communication be marked "Exhibit 47."

Said Exhibit 47 is in words and figures as follows, to-wit:

A. C. Michaelis, Architect, Joplin, Missouri

April 1, 1918.

Mr. A. S. Ross, 811 Frisco Bldg., Joplin, Mo.

Dear Sir: Replying to your inquiry as to relative costs of materials at the present time over that of four years ago [fol. 3393] will state that it is approximately as follows:

Labor, both common and skilled, 20%; common brick 50%; face brick 60%; structural iron work 75%; sheet metal work 80%; glass of all kinds 140%.

Hoping this gives you the desired information, I am

Yours very truly, A. C. Michaelis.

By Mr. John S. Leahy to Mr. Waterworth:

Q. Mr. Waterworth, you and Mr. Hess have made affidavits here and from your experience in the rating business in the State of Missouri you compute that there is a

certain cost of the net premiums necessary to carry on business. Will you please state, first, how long you have been in the rating business in Missouri?

A. Thirty-seven years.

Q. During that time you have had to do with fire insurance in all of its forms, have you not?

A. Yes, I believe so.

Q. And you are familiar with the cost necessary to carry on an insurance business in the State of Missouri?

A. Generally.

Q. You have stated in your affidavit that the cost of carrying on this business, the general average cost, is 42% of the net premium. Will you please explain how you arrived at those figures; apportion that 42%?

A. By agents' commissions, paid to agents in the State of Missouri which run anywhere from 23 to 25% I should say. The taxes paid to the State of Missouri, and to the municipalities of the State of Missouri, and to the Insurance De-[fol. 3394] partment for its maintenance in the State of Missouri, will, in my judgment, run 3%. 3% to the state and municipalities will run, taking them all together, from 2 to 3% more, a total I should say of between 5 and 6%.

Q. How is the balance of the 42% made up?

A. There is the general cost of the business including the salaries and traveling expenses of what we call the field men, the representatives of the company who supervise the business in the State of Missouri and I should say that they would run 5 or 6%. Then we have the Salvage Corps in the city of St. Louis and the Rating Bureaus of the State, and the Fire Prevention Bureaus of the State, which will cost 4½% more on the premiums on which they apply, probably on half the premiums of the State. That would be an average of a little over 2% on the whole premium income of the State. Then there is the general management of the business which I suppose from the best information I have on the subject would probably amount to 5 or 6% over all.

Q. And these figures, the 42% is arrived at by the sworn returns of the various companies?

A. Yes, 42% is the sworn return made to these departments.

Q. Mr. Waterworth, have you examined the affidavits filed by the managers of the various insurance companies?

Are the figures that they give true and correct with reference to Missouri?

A. The majority of those figures are in the sole possession of the companies themselves. We haven't access to them.

Q. With reference to the companies having lost money in the State of Missouri for the last twenty-one years, that [fol. 3395] part of the record is predicated upon the figures and records of this Department?

A. Yes, sir.

Q. And so say you, do you, Mr. Hess?

A. Yes, sir.

By Mr. John S. Leahy: We offer in evidence the certificate of Mr. James A. Waterworth and Harold M. Hess and ask that it be marked "Exhibit 48."

Said Exhibit 48 is in words and figures as follows, to-wit:

James A. Waterworth and Harold M. Hess, being duly sworn upon their oath state:

That to the best of their knowledge and belief the increase in net premiums to the Fire Insurance Companies which will result from the filings made October 1, 1917, with the Insurance Department will amount in percentage to approximately 3.4% of the net premiums collected on the fire insurance business done in the State of Missouri.

Affiants further state that based upon their experience of many years in the rate-making business and upon their knowledge of conditions incident to the transaction of the fire insurance business in the State of Missouri, that approximately 42% of the net premiums collected by Fire Insurance companies in the State of Missouri are required and consumed in the cost and expense of transacting and carrying on the fire insurance business in the State of Missouri.

James A. Waterworth, Harold M. Hess.

Subscribed and sworn to before me this 5th day of April, 1918. Barbara M. Brandt, Notary Public, Cole Co., Mo. My commission expires March 15, 1919. [Seal.]

[fol. 3396] By Mr. John S. Leahy: We offer in evidence the affidavit of Mr. A. G. Dugan, Western Manager of the Hartford Fire Insurance Company, and ask that it be marked "Exhibit 49."

Said Exhibit 49 is in words and figures as follows, to-wit:

To whom it may concern:

Mr. A. G. Dugan, being duly sworn on his oath deposeth and says:

I am the Western Manager of the Hartford Fire Insurance Company. I reside in the city of Chicago, Illinois, and have been actively engaged in the fire insurance business for thirty seven years.

From my experience and investigation I believe that the net earnings of fire insurance companies will be decreased by reason of the extraordinary conditions incident to the war enumerated under paragraph "Fourth" set out by James A. Waterworth and Harold M. Hess, as reasons for the filing of the increase of the rate of 10% of filings made to the Superintendent or Acting Superintendent of the Insurance Department of the State of Missouri on the 27th day of March, 1916, about 5%.

Since the conditions enumerated by the said Waterworth & Hess for the necessity of said increase have arisen, the insurance companies have increased their rates for the period covered by the unusual war conditions in the following states, to-wit:

Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Louisiana, Arkansas, West Virginia, Ohio, Indiana, Illinois, Tennessee, Nebraska, Colorado, Wyoming, New Mexico, Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, Pennsyl-[fol. 3397] vania, New Jersey, Delaware and Maryland, and I have reason to believe and so state the fact to be that the surcharge of 10% will be allowed in Michigan, Minnesota, North and South Dakota, and that the only state in which the surcharge of 10% has been declined by the Superintendent of the Insurance Department is Kansas; that the Superintendent of the Insurance Department of the State of Wisconsin has stated to the newspapers that by reason

of the profits heretofore made by the insurance companies in said state that he would decline to allow the surcharge, but that no application has as yet been made by the Insurance Companies for the increase of rates incident to the war conditions in the State of Wisconsin.

Affiant further states that in the event of a renewed application the Insurance Commissioner of the State of Kansas or any other state declines to allow the increase of rates made necessary by the extraordinary conditions incident to the war, insurance companies will resort to the courts for a remedy.

Affiant further states that predicated upon his thirty-seven years experience in the fire insurance business and his familiarity with conditions obtaining in the State of Missouri, incident to doing fire insurance business, it is his belief and he so states the fact to be, that the cost incident to doing a fire insurance business in said State is 42% of the net premiums and has been during the past preceding five years.

A. G. Dugan.

Subscribed and sworn to before me this 5th day of April, 1918. Barbara M. Brandt, Notary Public, Cole Co., Mo. My commission expires March 15, 1919. [Seal.]

[fol. 3398] By Mr. John S. Leahy: We offer in evidence the affidavit of Mr. Charles H. Lum, who is in direct charge of the Actuarial Bureau of the National Board of Fire Underwriters, and ask that this affidavit be marked "Exhibit 50."

Said Exhibit 50 is in words and figures as follows, to-wit:

State of New York,
City and County of New York, ss:

Personally appeared before me, Charles H. Lum, who being first duly sworn, deposes and says that he is in direct charge of the Actuarial Bureau of the National Board of Fire Underwriters, which Bureau is engaged in the work of collecting and tabulating information respecting losses

paid by fire insurance companies throughout the several states of the United States, that he has caused to be examined the records of the said Actuarial Bureau so far as they relate to losses paid in the State of Missouri for the years 1916 and 1917; that the attached tabulations have been prepared by him as a complete and correct exhibit of the experience of the member companies in the State of Missouri for the years mentioned as reported to the said Bureau, and which are to the best of his knowledge and belief true and correct.

Chas. H. Lum.

Subscribed and sworn to before me this 30th day of March, 1918. Wm. A. Payne, Notary Public. (Seal.)

[fol. 3339] Losses Reported in the State of Missouri by Fire Insurance Companies members of the Actuarial Bureau of the National Board of Fire Underwriters as Paid During the Years 1916 and 1917

Paid During 1916

Partial Losses

No. of claims.	Amount paid.	Whole loss.
11,919	$3,397,037	$3,778,020

Total Losses

No. of claims.	Amount paid.	Whole loss.
665	$1,337,323	$1,858,328

Paid during 1917

Partial Losses

No. of claims.	Amount paid.	Whole loss.
10,135	$4,170,141	$4,272,118

Total Losses

No. of claims.	Amount paid.	Whole loss.
1,551	$1,926,953	$2,929,394

By Mr. John S. Leahy: We offer in evidence the affidavit of D. E. Monroe, Vice-President of the American Central Insurance Company, and ask that this affidavit be marked "Exhibit 51."

Said Exhibit 51 is in words and figures as follows, to-wit:

[fol. 3400] STATE OF MISSOURI,
City of St. Louis, ss:

D. E. Monroe, being first duly sworn, says he is the vice-president of the American Central Insurance company, a corporation duly created, organized and existing under the laws of the State of Missouri, and has charge and jurisdiction of the said company's business in the State of Missouri.

Affiant further says that under the United States War Revenue Act of September, 1916, and October, 1917, the individual stock tax, corporation income tax and federal premium tax, together with increased cost in letter postage, telegraph and telephone messages, and also increase in railroad rates and Pullman rates, and hotel rates incident to the traveling expenses of its special agents, inspectors and adjusters, the cost of transacting the business of said company in the State of Missouri has been materially increased.

Affiant further says that there has also been a marked increase in the general expense of conducting the company's business in the State of Missouri, due to increase in salaries of employees; increase in the cost of printing and supplies necessary to the conduct of the company's business; increase in the cost of maintenance of the Rating Bureau, inspections and surveys; increase in cost of maintenance of the Protective Department and Fire Prevention Bureau.

Affiant further says that, in addition to the actual increase in expense of conducting the company's business in the State of Missouri, there has been a great advance in the cost of building material and labor incident to the repair and reconstruction of buildings damaged by fire; that over [fol. 3401] seventy (70) per cent of the fire losses on buildings in the State of Missouri are partial losses, which, under the terms of its policies the company is required to replace or supply the replacement cost in cash; therefore, affiant says that the partial losses on buildings by fire in the State

of Missouri are materially increased through this increased replacement cost.

Affiant further says that, after diligent inquiry, he is satisfied that the increase in the cost of doing a fire insurance business in the State of Missouri is true as to all other fire insurance companies doing business in the said State, as well as the company hereinbefore mentioned, and further, affiant sayeth not.

D. E. Monroe.

Subscribed and sworn to before me this 4th day of April, A. D. 1918. W. J. Mitts, Notary Public. My commission expires September 21, 1921. (Seal.)

Judge Charles G. Revelle: Let us ask that the Superintendent or Acting Superintendent treat as being offered by us and a part of this record, the tables 1, 2, 3 and 4, of the Insurance Department Reports for the years 1912, 1913, 1914, 1915, 1916 and 1917, those being the tables that contain the official reports of the premium income, the losses paid, and the total disbursements for the fire insurance companies doing business in the State of Missouri.

It is hereby stipulated and agreed by and between counsel for relators and counsel for respondent that the above "tables 1, 2, 3 and 4, of the Insurance Department reports for the years 1912, 1913, 1914, 1915, 1916 and 1917" shall not be copied into the bill of exceptions, because the same are material and relevant in so far only as they show the [fol. 3402] premium income and the losses paid of fire insurance companies doing business in the State of Missouri for these years, and such material and relevant facts are shown elsewhere in this bill of exceptions and may be used and referred to by the court and counsel with the same force and effect as if the same were copied herein.

John S. Leahy, Chas. G. Revelle, Counsel for Relators. Frank W. McAllister, Attorney-General; Counsel for Respondent.

Mr. John S. Leahy: We desire, Mr. Superintendent, to emphasize just a few facts that we believe cannot be denied.

First. That the fire insurance companies have done business in the State of Missouri at a loss for twenty-one years.

Second. That twenty-eight states have permitted the increase of 10% made necessary by the unusual conditions incident to this war.

Third. That but in one state has the Superintendent of Insurance declined to allow this increase and that is in the State of Kansas; that in the State of Wisconsin where the companies have always done a profitable business, the Superintendent of Insurance has not been requested as yet to allow the 10% increase, but has in a written statement through the newspapers said that he would decline to grant it because of the profitable business the companies have done in that State. With reference to Kansas we desire to call your attention to the fact that the declination on the [fol. 3403] part of the Insurance Commissioner to permit the 10% increase in rates was predicated not on the justice or injustice of the application, but because it is improper in form, and that this application will be refiled; that this increase of 10% will be filed throughout the United States whether the insurance business has been profitable or unprofitable makes no difference; and that Missouri is one of the four states in this Union that shows an unbroken record of losses to the insurance companies.

We desire to call your attention to the fact that it is a matter of common knowledge that the increase in building material since the war began has been between 40 and 50%; that the increase in merchandise during a like period has been from 50 to 80%; that the insurance companies are compelled to pay taxes to the Government that they didn't have to pay prior to the war period, under the law of September, 1916, and October, 1917; that by reason of the war business and that the increase in the hazard to fire has been very materially, how much we cannot say, but very material; that but yesterday a fire occurred in Kansas City which will cause a loss to the insurance companies of between $2,000,000 and $4,000,000, and that for the months of January, February and March, of 1918, the insurance companies have paid losses in Kansas City amounting to $750,000.00. That the losses sustained by these companies alone,

in Kansas City, during 1918, will cause them to sustain a very material additional loss in this State this year. Whether or not these unusual fires in Kansas City are incident to the war, incident to attacks of alien enemies or incident simply to the over draft that is being put on machinery we do not know, but there is the fact.

We desire to call your attention to the increase in the [fol. 3404] cost of traveling, and these companies all have field men who have to travel in this State, both increase in the cost of travel and increase in the cost of railroad tickets and Pullman tickets, and increase in the cost of postage and printing, and this application is not made to Missouri because Missouri has always been a graveyard to insurance companies, but is made because it is a nation-wide effort to sustain these companies and you know that the securities of these companies have been greatly depreciated by reason of the war; that the markets for these securities have been practically wiped out; that insurance is absolutely necessary to a civilized country and we hope that Missouri will not necessitate any capital action on the part of these companies in order to protect themselves from death, to withdraw from Missouri. This is not a political move and must not be treated as such. We look upon you as a person who is sitting here to act fairly to these companies, and these companies are protecting the property of the citizens of this State and they well as anyone else are entitled to compensation.

We request, Mr. Superintendent, that you make a finding of facts in respect to this filing for an increase in rates, and we desire to be understood as saying that if there is any testimony of any kind or nature that you desire from any class of people, or from any individuals in this State, we will produce it, but we pray that you will act on this matter speedily because every day that you fail to act on it these companies are not alone losing the general average loss they have experienced in the last twenty-one years, but are losing 19% additional premium. The 19% we ask for will only half make these companies up what they sustained during the war."

[fol. 3405] General Gose: Now, you gentlemen rest your case?

Judge Revelle: Yes.

Mr. Leahy: Our case rests; we conclude.

General Gose: Do you want to put in any more evidence in regard to those home and departmental expenses, or just rest your case for the present?

Mr. Leahy: In reference to that, as we have stated heretofore, we desire, as this is a matter that affects the public, and as you are specially appearing here for the public, we feel it is the duty of these insurance compaines to give you any information you desire. Now, if we have not adequately explained the items of expense, particularly the home office expense, and shown you the items that make up this eight per cent, then we suggest we have a deferred hearing in St. Louis and take the American Central Company, whose home office is located in St. Louis, and we can actually call the bookkeeper and give you the books so that you will have first-hand information.

General Gose: Well, I will state frankly that from the information furnished us we are utterly unable to tell what the home and departmental expenses were for any year, or the items which entered into them, and we have no way in the world of approximating even the pro rata that should be charged to Missouri.

Judge Revelle: General, would you like to do this, or have this done, would you like to select somebody, at our expense, and send them down, and pick out any company you want to, American Central, or any of the rest of them, and let him go into their books and furnish you item by item that which enters into that home office expense? Do you want to do that?

General Gose: No. Here is our position, in 1917, for [fol. 3406] instance, each one of these companies had a home and departmental expense account——

[fol. 3406] Judge Revelle: Yes.

General Gose: —now, they must have known what that was, and what items made it up, and all that we want them to do is to furnish us a copy of that expense upon which they determine the Missouri pro-rata part.

Mr. Leahy: Well, one company is the same as the other. I suggest that we have a deferred hearing in St. Louis and we will have that right in the office of the American Central, and if you haven't any one available perhaps either of these gentlemen here would be able to come along and get at the

information you want; if not, if there is any one you want to employ, why, you can employ them and the expense will be defrayed by the insurance companies.

General Gose: No person other than the person who made up these home and departmental expenses could give us what we want.

Mr. Leahy: No. He couldn't explain it. So we will have the man right there in the American Central, the man that made up this record of home office expenses. The home office expense is eight per cent; he can say what makes that eight per cent; what are the items that go into it.

General Gose: No. Here is what we want; we want them to simply furnish us a copy of the home and departmental expense for 1917 or 1916, for instance, both years——

Mr. Leahy: Yes.

General Gose: —and say, "Here, gentlemen, is our home and departmental expense for that year, and we have charged Missouri with three per cent"—or two per cent, or five per cent, or whatever it is.

[fol. 3407] Mr. Leahy: Now, in addition to that statement I assume you would like to interrogate the person that prepared that report?

General Gose: We would like to ask him a few questions on that.

Mr. Leahy: Now, we will try either then have this report made up and have the man come here, or if you prefer you can come down and examine the books, whichever is most convenient to you.

General Gose: There would be no use in us going down there, until this report is prepared.

Mr. Leahy: I will get the man up here tomorrow. I will just call him by wire and have him here in the morning. Don't take this down. (Addressing reporter.)

(Consultation was held between counsel and a recess taken for the lunch hour.)

Thereafter, at 2:00 p. m. on said Tuesday, the 1st day of October, 1918, pursuant to the recess taken for the lunch hour, the further hearing of testimony in said cause was resumed, as follows, to-wit:

Thereupon, the Respondent, by his counsel, in order to sustain the issues to be sustained in his defense to said cause of action, offered the following evidence, to-wit:

E. G. McGee, of lawful age, produced as a witness on the part of the Respondent, being first duly sworn, upon examination testified as follows, to-wit:

Direct examination by General Gose:

Q. What is your name?

A. E. G. McGee.

Q. What is your official position with the Insurance Department?

A. Chief Clerk.

[fol. 3408] Q. How long have you been in the Insurance Department of the State of Missouri, Mr. McGee?

A. Five years last March.

Q. What other position have you held in the Insurance Department besides that of Chief Clerk?

A. Well, I was Deputy Superintendent for about a year.

Q. Are you familiar with the reports filed by the insurance companies doing business in this State, both their experience by classes report and the annual statement of their business?

A. Yes, sir. It has been my business to oversee the compiling of the figures of those statements for the annual report of the department.

Q. As I understand it, all the stock fire insurance companies, both domestic and foreign, now doing business in the State of Missouri, and represented in this hearing by the relators; that is correct, is it not?

A. That is my understanding; yes, sir.

Q. Have you examined the individual reports of these different companies?

A. I have.

Q. Both the experience by classes and the annual statement?

A. Yes, sir.

Q. What was the total combined capital stock of all such companies for the year 1913?

A. Total capital stock in 1913 was $80,666,000.

Q. What was the total net earnings of those companies as shown by the dividends paid and the increase made in surplus for the year 1913?

A. $635,178. Just a moment there. You mean on the——

Q. Now, listen to the question. Just read it.

Q. (Read by reporter.) What was the total net earn-
[fol. 3409] ings of those companies as shown by the dividends paid and the increase made in surplus for the year 1913?

A. Total earnings for 1913 as shown by dividends paid and increase in surplus was $10,293,290.

Q. What per cent upon the total capital stock did such earnings represent?

A. 12.7%.

Q. What was the combined surplus of such companies at the beginning of 1913?

A. Two hundred and fifty-five——

Q. (Interrupting.) No, I am not talking about capital and surplus.

A. Oh.

Q. What was the combined surplus?

A. Surplus? $174,864,237.

Q. What was the combined surplus and capital of these companies for the year 1913?

A. $255,830,237.

Q. Now, the earnings for 1913 being $10,293,290, as you have stated, what per cent do such earnings of 1913 represent of the combined capital stock and surplus?

A. 4 per cent.

Q. What was the total combined capital stock of all such companies for the year 1914?

A. $81,934,200.

Q. What was the total net earnings of these companies as shown by the dividends paid and the increase made in surplus for the year 1914?

A. $14,001,211.

Q. What per cent upon the total capital stock did such earnings represent?

A. 17 per cent.

[fol. 3410] Q. What was the combined surplus of such companies?